

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.,

08CV2755

Plaintiff,

vs.

June 16, 2015

8:30 A.M.

SAP AMERICA, INC., ET AL.,

Volume 2

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE
AND A JURY

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18 Proceedings recorded by mechanical stenography;
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1 TUESDAY, JUNE 16, 2015, 8:30 A.M.

2 (Proceedings resumed in presence of the
3 jury as follows:)

08:33:52

4 THE COURT: Good morning, ladies and
5 gentlemen.

6 THE JURORS: Good morning.

7 THE COURT: Have a seat.

8 Nice beautiful day out so you're better off
9 being in here, right?

08:34:02

10 Okay. Mr. Reidl, you may continue.

11 MR. CARNEY: Kim, thank you.

12 THE COURT: That's why she gets paid the
13 big bucks.

08:34:55

14 MR. CARNEY: I was going to say, Kim, are
15 we ready? There's a button to be pushed. Who would have
16 thunk it?

17 MS. ANDERS: Yes, I'm ready.

18 MR. CARNEY: Thank you.

19 Kim, could you turn to Exhibit 92, please?

08:35:20

20 MS. LUARDE: We're having some technical
21 difficulties here.

22 THE COURT: I had the technicians, they
23 were here at 7:30 this morning saying "Everything is
24 perfect."

08:35:44

25 Can you see it on your screens? Okay.

1 MS. ANDERS: What exhibit?

2 MR. CARNEY: Exhibit 92, please.

3 DIRECT EXAMINATION OF KEVIN REIDL (RESUMED)

4 BY MR. CARNEY:

08:36:01 5 Q. Mr. Reidl, you have in front of you Exhibit 92.

6 Can you please identify the document?

7 A. Sure. This is an e-mail from Jon Woodrum of LSi to
8 myself and Dan Lowery and Joe Guagenti from LSi. It's
9 dated Saturday, July 14th, 2007.

08:36:20 10 Q. And this is approximately four months after you've
11 gone live on Business One?

12 A. Yes.

13 Q. And what's Mr. Woodrum conveying to you in this
14 e-mail?

08:36:36 15 A. That they're working with SAP on performance
16 improvements. It says, "We're working closely with SAP
17 on performance areas and where and how we see potential
18 enhancements from SAP basic, SAP DI API and the LSi
19 In-Flight add-on."

08:36:54 20 Q. I see a reference later in the e-mail to a PL29.

21 A. Yes.

22 Q. What is that referring to?

23 A. A patch level. Those were, patches were released
24 to -- by SAP and LSi to fix bugs and improve performance
08:37:15 25 and so forth.

1 Q. And my understanding is that there were numerous
2 patches that were -- that were put on Hodell's system to
3 try and improve Business One, is that correct?

4 A. Correct. Yes. There were a number of them over
5 the course of four or five months.

6 Q. And did you experience a significant upgrade with
7 Patch Level 29?

8 A. No, I don't believe so.

9 We -- there was a number of these patch
10 levels, and they -- they may have fixed a thing here or
11 there, but the performance of the system overall
12 continued to be slow and continued with its lockups.

13 Q. Now, during SAP's opening statement, it was -- it
14 was stated that Hodell's performance had improved
15 significantly on Business One by November of 2007.

16 Do you recall that?

17 A. Yes, I recall that.

18 Q. Did the Business One performance improve
19 significantly by November of 2007?

20 A. No. No. It still had slow -- it still wasn't
21 working performance-wise. It was slow and it had
22 lockups, bugs, and so forth.

23 Q. It was stated that by May of 2007 there was a 50%
24 improvement in performance.

25 Is that accurate?

1 A. I don't believe so.

2 50 percent improvement on what? 50%
3 improvement on 20% functionality would have been another
4 10%, so, no, the performance continued to be slow and
08:39:04 5 problematic.

6 Q. By September it was stated that performance had
7 improved by 500%.

8 Is that true?

9 A. No. It hadn't improved by 500%, I don't believe
08:39:37 10 so.

11 Q. Do you know who Edward Neveux is?

12 A. Yes. He was a development employee for SAP.

13 Q. It was stated that in October of 2007, he came to
14 your workplace for a day to observe performance of the
08:39:38 15 system.

16 Do you recall that?

17 A. Yes, I do.

18 Q. Did he, in fact, come to your workplace to observe
19 the performance of the system?

08:39:47 20 A. Yes, he was at our office.

21 Q. In November of 2007 were you still performing -- or
22 excuse me, was Hodell still having performance issues
23 with Business One?

24 A. What date was that again? Can you repeat that?

08:40:13 25 Q. October of 2007.

1 A. Yes, we were still having performance issues.

2 Q. Just again, what time of performance issues were
3 they?

4 A. The biggest issues were system, the speed of the
08:40:25 5 system. It was slow, unresponsive. It locked up
6 frequently. It froze up.

7 Our users couldn't complete their tasks.
8 When it froze up, we would have to reboot it, restart it.
9 We are having functionality issues that continued.

08:40:44 10 So those issues that we had early on, they
11 continued. I mean, they -- the bug, the patch levels
12 might fix a bug or two here or there, but they continued.

13 MR. CARNEY: Kim, can you please turn to
14 Exhibit 109?

08:41:10 15 Q. Now, did anybody at SAP ultimately tell you that
16 Business One was not an appropriate solution for Hodell?

17 A. Yes, they did. In November of 2007.

18 Q. I'd ask you to identify Exhibit 109.

19 A. This is an e-mail from Michael Sotnick of SAP to my
08:41:34 20 father, Otto, myself, Dan Lowery, Jon Woodrum, Dan Kraus,
21 and Paul Killingsworth, dated 11/16/2007.

22 Q. Now, Michael Sotnick was the boss of Dan Kraus, is
23 that correct?

24 A. That's my understanding, yes.

08:41:51 25 Q. Okay. And what, you know, what did he convey to

1 you in this e-mail?

2 A. Well, he told us that it wasn't going to work for
3 us.

4 He said, "We have evaluated the processes
08:42:05 5 and approach and have come to the conclusion that there
6 is no change we can make on our side that would result in
7 a material improvement." So that indicated really for
8 the first time definitively that the system wasn't going
9 to work for us.

08:42:23 10 Q. And this is a month after Mr. Neveux visited your
11 facility in Valley View?

12 A. Yes.

13 Q. How many months was this after Hodell had started
14 operating the Business One software?

08:42:38 15 A. About eight months.

16 Q. During this eight-month period, did anybody at SAP
17 tell you that you should move away from Business One?

18 A. No, they didn't.

19 Q. Did anyone tell you that there was no go-forward
08:42:56 20 path with Business One?

21 A. No, sir.

22 Q. Upon receiving this information from Mr. Sotnick,
23 what steps did you take?

24 A. Well, when we knew that it wasn't going to work for
08:43:19 25 us, we went out, and after we received this, we hired a

1 consultant that would help us evaluate replacement
2 software because we had decided that we obviously would
3 have to replace the software if it wasn't going to work
4 for us.

08:43:33 5 Q. Okay. During the eight-month period that you were
6 operating under Business One, did you suffer loss in
7 productivity?

8 A. Yes.

9 MR. STAR: Objection. Leading.

08:43:47 10 THE COURT: Overruled.

11 A. Yes, we had productivity losses.

12 Our people, as I mentioned earlier, our
13 people were scrambling. We had to bring in extra people
14 to handle the workload, and so, yes, we suffered from
08:44:02 15 productivity issues.

16 Q. What -- what other -- what other economic harm did
17 Hodell suffer?

18 A. We couldn't fulfill our customers' obligations
19 sometimes and had to do so in a delayed fashion, so our
08:44:20 20 reputation, our service reputation -- in the opening
21 statements, you heard that we rely heavily on our service
22 reputation as a differentiator, and that's always been
23 very important to us, and we weren't able to sustain that
24 level of service so our reputation took a big hit in the
08:44:38 25 marketplace.

1 Our customers were frustrated with us, and,
2 you know, we struggled to meet their obligations and to
3 fulfill their requirements.

08:44:53

4 Q. What about -- what about employees, was there an
5 impact with respect to employees?

6 A. We had always distributed 20% of our pre-tax
7 profits, so we had profit sharing with every employee in
8 the company, every full-time employee in the company, and
9 we had to stop doing that in 2009.

08:45:15

10 Q. Have you begun sharing -- the profit-sharing plan
11 again with employees?

12 A. No, we haven't.

13 Q. Why not?

08:45:27

14 A. Because we're still digging out from the mess that
15 this created for us.

16 Q. So I take it the economic impact on Hodel
17 continued even after it decided to move away from
18 Business One?

19 MR. STAR: Objection. Leading.

08:45:38

20 THE COURT: Overruled.

21 A. Yes, it continued.

22 We -- we had traditionally grown through
23 acquisitions and organically, and we weren't able to do
24 an acquisition that we would have liked to do, so it
25 continued and we had continued productivity issues.

08:45:53

1 And it was a struggle and continues to be a
2 struggle still digging out of some of that.

3 Q. Who was your lender at the time?

4 A. PNC.

08:46:09 5 Q. And were they concerned with your economic
6 performance?

7 A. Yes. They indicated that they did not want us to
8 do the acquisition and wouldn't fund it, and they even
9 threatened liquidation.

08:46:31 10 And so we had to -- we had to deal with a
11 lender that was unhappy with our performance, and that,
12 that brought significant hardship to us.

13 We had to navigate through that, and it
14 was -- it was a tough time.

08:46:45 15 Q. Okay. Is there anything specific that your lender
16 did other than threaten liquidation?

17 A. They shut down the acquisition that we tried to do.

18 We had an acquisition on the west coast
19 that we were working with and had negotiated a deal, and
08:47:07 20 the lender shut down the deal and said, "We're not going
21 to --"

22 MR. STAR: Objection, Your Honor.

23 THE COURT: Objection sustained.

24 MR. STAR: This is all hearsay.

08:47:15 25 THE COURT: Objection sustained.

1 MR. STAR: The last several questions as
2 well.

3 THE COURT: Too late for that.

4 BY MR. CARNEY:

08:47:24 5 Q. You previously mentioned that in 2007, Hodell
6 employed close to 180 employees?

7 A. Correct.

8 Q. And currently Hodell employs 130 employees?

9 A. Correct.

08:47:41 10 Q. Why the drop in head count?

11 A. In early 2009, we had to do our first ever layoff,
12 and so we had to lay off about 10 or 12 people, and
13 since, we haven't replaced people that have left or
14 retired.

08:48:02 15 Q. What do you attribute that to?

16 A. The continuing difficulty that we've had with the
17 system; that the challenges that this presented to us.

18 I mean, this really hit us hard as an
19 organization, and we had to dig ourselves out.

08:48:24 20 Q. How did Hodell go about looking for replacement
21 software?

22 MR. STAR: Objection. Asked and answered.

23 THE COURT: Overruled.

24 A. We hired a consulting firm and paid them about 35
08:48:36 25 or \$37,000 to help us evaluate all the various

1 replacement software packages that were out there.

2 And we did that because we needed to do it
3 quickly. We needed it -- once we -- once they told us
4 that it wasn't going to work for us, we determined that
08:48:53 5 we need to quickly get off the system as quickly as we
6 could, and the consulting firm helped us do that.

7 They evaluated 10 or 11 different software
8 packages in conjunction with us, and they originally
9 said --

08:49:10 10 MR. STAR: Objection. Your Honor, I'm
11 sorry to interrupt.

12 This is all hearsay.

13 THE COURT: Yes. Objection sustained.

14 BY MR. CARNEY:

08:49:17 15 Q. Who did you ultimately choose to replace the
16 Business One software?

17 A. Profit 21.

18 Q. And when was Profit 21 installed at Hodell?

19 A. In April of 2009.

08:49:32 20 Q. Okay. Well, you were told in November of 2007 that
21 Business One would not work for you.

22 Why did it take so long to get on a new
23 software system?

24 MR. STAR: Objection. Hearsay.

08:49:47 25 Mischaracterizes the testimony and the evidence.

1 THE COURT: Overruled.

2 You can answer if you understand the
3 question.

4 THE WITNESS: Yes, sir.

08:49:57 5 A. Well, it took from the time that we decided to move
6 and the time we went live on a system, it took over a
7 year, and that's an accelerated process.

8 The Profit 21 originally told us it would
9 take 18 months to two years, and we negotiated with them
08:50:12 10 to shorten that time period down to 12 months because we
11 really needed to get off of SAP quickly.

12 And they worked with us on that and agreed
13 to that.

14 Q. How much did you expend, how much did Hodell expend
08:50:30 15 on Profit 21?

16 A. We spent a million dollars, approximately.

17 Q. Was that budgeted for?

18 A. No. No. We wouldn't budget a million dollars for
19 a software system when we had just installed one two
08:50:46 20 years prior.

21 Q. And is Hodell running Profit 21 today?

22 A. Yes, we are.

23 Q. How is Hodell's -- how's the performance of
24 Profit 21 at Hodell?

08:51:05 25 MR. STAR: Objection. Relevance.

1 THE COURT: Overruled.

2 A. The performance works well.

3 It handles the transactions, it handles the
4 number of users, it handles the database size, it handles
08:51:17 5 that all well, and our employees can focus on serving our
6 customers and not the difficulties of the computer
7 system.

8 So it works well for us.

9 Q. It was stated in SAP's opening that Hodell's
08:51:38 10 performance actually increased while -- financial
11 performance increased while Hodell was on Business One.

12 Do you recall that statement?

13 A. Yes, I recall that.

14 Q. Why would you purchase and install a new software
08:51:54 15 system if Business One was improving your financial
16 performance?

17 A. I'm sorry. Can you say that again?

18 Q. Why would you purchase and install a new software
19 system if Business One was improving Hodell's financial
08:52:08 20 performance?

21 A. The answer is we -- we wouldn't do that if the
22 software system was working well.

23 We desperately needed to get off of that
24 system, and we had to spend the money, the extra million
08:52:23 25 dollars, to go out there and replace it.

1 And our employees applauded that decision.
2 In fact, one of my branch managers told me that his team
3 was cheering when they heard that.

4 MR. STAR: Objection. Hearsay.

08:52:38 5 THE COURT: Objection sustained.

6 BY MR. CARNEY:

7 Q. In SAP's opening, you recall that there was a
8 discussion about a number of SAP documents in 2005 and
9 2006 that lowered the target market for Business One to
08:53:08 10 companies with 10 to 100 employees and 50 concurrent
11 users.

12 Do you recall that statement?

13 A. Yes, I do.

14 Q. When did you first learn that these documents
08:53:16 15 existed?

16 A. We learned that these documents existed when we
17 were preparing for the lawsuit, which would have been in
18 late 2008, and when, during the discovery process with
19 LSi and SAP had to turn over their documents.

08:53:33 20 So that's, that's the first time we saw
21 this information.

22 Q. Is there a reason you didn't search the Internet
23 for them in 2004 or 2005 prior to going live with
24 Business One?

08:53:46 25 A. We felt there was no need to.

1 We had -- it had been represented to us by
2 their channel partner, LSi, that the system could handle
3 our needs. Their literature was consistent with that.
4 Another business partner had indicated that it could
08:54:18 5 handle our needs, so we didn't feel that we needed to do
6 any further research.

7 Q. In SAP's opening, it was suggested that Hodell did
8 not have the appropriate hardware to support Business
9 One.

08:54:24 10 Do you recall that statement?

11 A. Yes.

12 Q. As part of the Business One implementation, did
13 Hodell upgrade its then existing hardware?

14 A. Yes, we did.

08:54:34 15 Q. Explain.

16 A. We followed the advice of SAP's business partner
17 LSi, and they made recommendations to us on the type of
18 server to buy, and so we went out and bought a new
19 server, a big, new server for -- to run SAP on per their
08:55:00 20 recommendations.

21 We installed that server.

22 We also purchased a couple of new Citrix
23 servers, and those are network servers, so we went out
24 and spent I want to say in the neighborhood of \$50,000 on
08:55:11 25 hardware, and so our understanding was that we had the

1 horsepower, if you will, we had the pickup truck that was
2 required to pull the trailer.

3 So we bought that hardware that they
4 recommended, and brand new hardware.

08:55:28 5 Q. After Business One went live, did you continue to
6 upgrade your computer hardware?

7 A. Yes, we did an upgrade in, I believe, in early
8 2008.

9 We had hired a full-time IT director in the
08:55:41 10 fall of 2007, his name was Joe Vislocky, and one of the
11 things he did when he came on, he wanted to help out
12 where he could with improving the performance, and so he
13 brought in a consultant and they did some evaluation and
14 analysis of our network, made some recommendations, and
08:56:01 15 Joe went out or he asked me for authorization to buy a
16 couple of servers. I authorized that.

17 And I believe he did that in early 2008.

18 Q. Did you implement all of the recommendations of the
19 consultant that was engaged?

08:56:18 20 A. Yes. I believe we bought the servers and equipment
21 that they had recommended, and Joe and his team installed
22 it.

23 Q. Did those recommendations improve the performance
24 of Business One?

08:56:29 25 A. No. There were no material improvements.

1 I mean, there may have been some minor
2 improvements, but overall the system's slowness was still
3 there.

4 Q. Now, Mr. Star made reference to the fact that
08:56:44 5 Hodell's, during the operation of Business One, Hodell
6 recorded record gross profits while operating under
7 Business One.

8 Do you recall that?

9 A. Yes, I do.

08:56:54 10 Q. How is it that Hodell could have had record gross
11 profits while on Business One if the software was not
12 functioning properly?

13 A. Well, the record gross profits would have been
14 related to sales, and we were able to generate those to
08:57:15 15 meet those sales obligations by scrambling.

16 Every -- by every person in the
17 organization doing whatever they could to enter orders
18 and fulfill our customers' requirements.

19 But what's important to note is that the
08:57:27 20 net profit is what counts, the net profit is the company
21 that -- the money that the company actually earns.

22 The net profit had reduced, had been
23 reduced significantly in 2007 and 2008 versus previous
24 levels, and that's because our expenses were higher, so
08:57:47 25 it cost us more money to serve our customers.

1 Q. What type of expenses increased?

2 A. Payroll expenses increased, interest costs
3 increased, depreciation increased because we were
4 spending money on software, and in 2008 we were already
08:58:13 5 spending money on replacement software for Profit 21.

6 MR. STAR: Your Honor, objection. Move to
7 strike all this. It lacks foundation. There's no
8 business records to support any of this testimony.

9 MR. CARNEY: He's the president.

08:58:25 10 THE COURT: Yeah, he can go ahead and
11 answer.

12 You can cross-examine on it.

13 MR. STAR: Thank you.

14 MR. CARNEY: Just bear with me.

08:59:06 15 BY MR. CARNEY:

16 Q. Yesterday we talked about the development agreement
17 between LSi and Hodell.

18 I just want to ask you a couple more
19 questions about it, okay?

08:59:18 20 A. Okay.

21 MR. CARNEY: Kim, can you get to Exhibit
22 291?

23 Q. When you signed the development agreement in 2004,
24 did Hodell consider it to be contractually obligated to
08:59:51 25 buy 80 Business One licenses referred to in this

1 document?

2 A. Yes, we did.

3 Q. At that time did LSi present you with any other
4 documentation to sign?

09:00:05 5 A. No, they did not.

6 Q. Were you provided with a license agreement in
7 December of 2004?

8 A. No, we weren't.

9 Q. Is there anything in the development agreement
09:00:25 10 saying that LSi or IBIS is not an agent of SAP?

11 A. No, there isn't.

12 Q. I just want to ask you a couple questions about the
13 license agreement.

14 MR. CARNEY: I believe that's Exhibit 252,
09:00:50 15 Kim.

16 Q. The license agreement itself was between Hodell and
17 SAP America, correct?

18 A. Correct.

19 Q. And this was signed one year after the development
09:01:12 20 agreement we were just referring to between LSi and
21 Hodell, correct?

22 A. Correct.

23 Q. During this one-year period, how much money had
24 Hodell spent on the development of -- or how much money
09:01:31 25 had Hodell spent pursuant to the development agreement

1 with LSi?

2 A. Just shy of \$300,000. At that point I believe it
3 was \$275,000 that we had spent.

4 Q. And the license agreement itself, who presented
09:01:57 5 that to you?

6 A. LSi.

7 Q. Was anyone from SAP present when that was presented
8 to you?

9 A. No, sir.

09:02:06 10 Q. Do you blame SAP for the damage done to Hodell?

11 A. Yes, I do.

12 Q. Why?

13 A. Well, they -- they misled us on the capabilities of
14 the system in terms of number of users, their
09:02:56 15 performance, the database and transactions.

16 It was known back in 2004, 2005, we would
17 have a large number of users, and we were never notified
18 that we were outside the Sweet Spot of their number of
19 users.

09:03:13 20 We were never notified that we didn't meet
21 the criteria or that we were outside the criteria for
22 their -- for their number of users and the functionality
23 of their system.

24 And after we -- we went live, they became
09:03:41 25 engaged with us directly around April of 2007, and they

1 never told us what they were hearing from their
2 developers.

3 We did not hear directly from them that the
4 system was never going to work for us until November of
09:03:54 5 that year.

6 And it was well-known by many people in
7 their organization, as we've seen in e-mails, that their
8 heads of development, their heads of sales, their heads
9 of SAP Business One, their CEO, which I went to directly,
09:04:12 10 Bill McDermott, they knew about this.

11 MR. STAR: Your Honor, I'm sorry to
12 interrupt.

13 This is just rambling testimony.

14 THE COURT: Yes. Ask him -- put a question
09:04:21 15 to him.

16 BY MR. CARNEY:

17 Q. Do you believe there's any culpability on the part
18 of LSi for the damage to Hodell?

19 A. Yes, I do.

09:04:33 20 Q. How so?

21 A. Well, I -- I don't blame them for selling the
22 product to us.

23 I believe that they were representing the
24 product to us as they understand it, as it was
09:04:48 25 represented to them, so -- and what we were hearing from

1 them was consistent with what we had heard from another
2 channel partner, American Express, and what we had seen
3 in the literature.

4 So it was all consistent, so I believe that
09:05:01 5 they sold it in a good faith effort.

6 However, I do believe that as a channel
7 partner, they had access to documents after the fact that
8 showed otherwise in terms of number of users.

9 MR. STAR: Your Honor, I'm sorry again.

09:05:18 10 THE COURT: Yes, put another question to
11 him.

12 MR. CARNEY: I have no further questions,
13 Your Honor.

14 THE COURT: Thank you.

09:05:25 15 You may cross-examine.

16 MR. STAR: Thank you, Your Honor.

17 CROSS-EXAMINATION OF KEVIN REIDL

18 BY MR. STAR:

19 Q. How are you, Mr. Reidl?

09:06:10 20 A. I'm fine. How about you, Mr. Star?

21 Q. I'm doing well, thanks.

22 Sir, yesterday and today you've repeatedly
23 referred to the solution, the software that Hodell went
24 live on, as just Business One, but it wasn't just
09:06:35 25 Business One, was it?

1 A. It was Business One, In-Flight and Radio Beacon.

2 Q. Right. And In-Flight was a customized product for
3 Hodell, correct?

09:06:40

4 A. It was a customized product for Hodell and the
5 fasteners industry.

6 Q. That's a product that you knew didn't exist before
7 you developed it along with IBIS/LSi, right?

8 A. It existed in FACTS, as I represented yesterday, so
9 they were --

09:06:51

10 Q. Let's break that down.

11 As you testified yesterday, before SAP and
12 Business One were ever involved, you were using a FACTS
13 software solution that you got through Dale Van Leeuwen
14 and IBIS?

09:07:06

15 A. Correct.

16 Q. Okay. And on that FACTS solution, Van Leeuwen and
17 IBIS had built an add-on that they called In-Flight?

18 A. Correct.

09:07:19

19 Q. And when you eventually decided that you'd go to a
20 Business One platform to replace FACTS, you decided that
21 you would recreate In-Flight to work with SAP?

22 A. They were going to recreate In-Flight to work with
23 SAP.

09:07:34

24 Q. And it was going to be re-created from scratch,
25 correct?

1 A. It was going to be built on the new platform, the
2 SAP platform with their development kits.

3 Q. Thank you. And the code, the software code for
4 In-Flight on Business One didn't exist back in 2003 or
09:07:48 5 2004?

6 A. My understanding is that they were going to build
7 it that, that code, build that software on the SAP
8 platform and create that code, yes, on the SAP platform.

9 Q. Thank you.

09:08:02 10 So when you went live, you went live in
11 March, 2007 on a custom software solution, a three-part
12 solution, right?

13 A. Three -- yes, as I mentioned, SAP, In-Flight, and
14 Radio Beacon.

09:08:14 15 Q. And the SAP piece of that was the base SAP software
16 that all SAP customers get, correct?

17 A. Yes. It was the foundation for the solution.

18 Q. And on top of that, you had Radio Beacon as an
19 add-on product?

09:08:40 20 A. Yes, Radio Beacon was our warehouse management
21 software.

22 Q. And then on top of both of those things, you were
23 going to put your custom In-Flight add-on that was being
24 developed to work with Business One?

09:08:42 25 A. Yes. This was -- understand, this In-Flight was

1 not just our custom. That was being developed for the
2 fastener industry.

3 You refer to it being ours. It was for the
4 fastener industry.

09:08:53 5 Q. Thank you. Because you were going to resell it to
6 other companies in the fastener industry, yes?

7 A. We were not going to resell it.

8 Q. You were going to share in the commissions of
9 reselling that custom In-Flight product throughout the
09:09:06 10 fastener industry, yes?

11 A. As I testified yesterday, we were going to
12 be -- receive a thousand dollars commission per user up
13 to a hundred thousand users, and that was to -- because
14 we were the first on the software and we were going to
09:09:21 15 act as a reference account.

16 Q. Great. We're going to get into some of that in
17 more detail, but you were going to earn commissions on
18 the resale of In-Flight to other companies in the
19 fastener industry, we agree on that?

09:09:35 20 A. Up to -- up to the first 100 users on the software.

21 Q. You were the project lead at Hodell for this
22 project, right?

23 A. Correct.

24 Q. You always understood that Business One, the base
09:09:53 25 platform by itself, didn't have the functionality Hodell

1 actually needed to run its business?

2 A. Correct. It would -- it would be -- it would work
3 in conjunction with the add-on of In-Flight and Radio
4 Beacon.

09:10:07 5 Q. So you needed In-Flight and you needed Radio Beacon
6 to make Business One even a viable solution for you to
7 consider?

8 A. Yes, and that's how it was sold and marketed to us,
9 that it would be the solution.

09:10:20 10 Q. Sir, sir, I'm sorry.

11 You understood that for Business One to be
12 a viable solution for you, you needed not just the base
13 software but you needed the two add-ons, Radio Beacon and
14 the custom In-Flight add-on that was going to be
09:10:35 15 developed, correct?

16 A. Yes, we needed all three.

17 Q. Thank you.

18 So the jury understands this, when you
19 actually went live in March, 2007, you didn't just go
09:10:49 20 live with the base SAP software; you went live with the
21 whole three-part custom solution?

22 A. Correct.

23 Q. That's a three-part custom solution, no one else in
24 the world had ever gone live on?

09:11:02 25 A. Correct. We were the first.

1 Q. And yesterday you talked about the testing that was
2 done at Hodell on this three-part custom solution, do you
3 remember that?

4 A. Yes.

09:11:13 5 Q. Okay. And you recognize that only Hodell in its
6 actual environment with the software loaded on its
7 machines could do the stress testing of this custom
8 solution?

9 A. Yes. As well as LSi.

09:11:30 10 Q. You worked with IBIS/LSi to do the stress testing
11 at your offices on your machines?

12 A. Correct.

13 Q. Let's take a look --

14 MR. STAR: Bob, could you please pull up
09:12:07 15 Exhibit 145, please?

16 Your Honor, for whatever reason we're not
17 able to make the switch from their presentation to ours
18 if I may have just a moment.

19 THE COURT: I may be able to do it for you.
09:12:32 20 Are you on the rear table computer?

21 MR. ADELMAN: Yes, Your Honor.

22 THE COURT: Well, you should be -- it
23 should be working.

24 Let me try that.

09:13:03 25 MR. STAR: I think we're going to need a

1 couple minutes, if Your Honor doesn't mind.

2 THE COURT: Let me -- I'll see if I can get
3 our -- one of our systems people up here.

4 MR. STAR: Thank you.

09:13:17 5 THE COURT: I'll tell you a funny story
6 about the telephone in a minute.

7 (Pause).

8 THE COURT: You're probably wondering why a
9 Judge has a telephone on the bench, right?

09:13:44 10 When I first got -- you know I was in the
11 State Court of Appeals before this and the state Common
12 Pleas Court. Of course we didn't have a telephone. We
13 didn't even have an answering machine. My mother used to
14 call and say what goes on over there, I can never get
09:13:57 15 ahold of you. We didn't have an answering machine.
16 That's how primitive we were.

17 So I come here and I see telephones, pretty
18 nice. Who can I call? You know, we were in trial.

19 And I learned, the Judge will remain
09:14:12 20 nameless, but there was a Judge here some time ago that
21 had -- he was the one that ordered phones to be on one
22 Judge's desk. So if one Judge got it, everybody wanted
23 it. So every Judge had a phone on their desk. He would
24 have somebody call in the back when he wanted a
09:14:38 25 break -- wait a minute, that's not the best.

1 He would answer the phone and say "I've got
2 to go, the President is on the phone," and hang up. And
3 people believed him for years.

4 And he went in the back and smoked a
09:14:49 5 cigarette.

6 That was always in the old days, too, as a
7 lawyer, you always wanted a Judge that smoked cigarettes.
8 You would say why would that be? Because they couldn't
9 go more than an hour without taking a break. As a
09:15:03 10 lawyer, you like that.

11 But nobody smokes anymore, right? Do we
12 have any smokers on the jury? Two, or three, all right.
13 So you go down to the nice patio down there?

14 A JUROR: Yep. Outside.

09:15:21 15 THE COURT: All right. When I was a
16 prosecutor, we had -- in the old days, you could, you
17 know, there were Judges that smoked right on the bench.
18 I couldn't believe it, so -- yeah, right.

19 Now, a Judge decided, see how nice your
09:15:39 20 jury room is with the windows and everything. There's a
21 long story about that but in Common Pleas Court the
22 jurors are locked up in a room with no windows, nothing,
23 and one Judge --

24 A JUROR: I was there.

09:15:53 25 THE COURT: You were there? Okay.

1 One Judge decided I'm not going to let the
2 jury smoke because it bothers the nonsmokers.

3 Well in those days you didn't even think
4 about that. And I'm the prosecutor going you can't do
09:16:05 5 that, because if a guy can't have a cigarette after he's
6 deliberating, they'll be crazed and there will be fights
7 in the jury room. Judge didn't care. He said no smoking
8 in the jury room, and that was the beginning of where we
9 are now.

09:16:18 10 Can't even smoke on the street out there, I
11 don't think, can you?

12 (Discussion had off the record).

13 THE COURT: Well, I think we're all set.

14 Is it working?

09:26:42 15 (Pause)

16 THE COURT: Success. Good work, men.

17 Thanks.

18 MR. STAR: Thank you, guys. Thank you.

19 BY MR. STAR:

09:27:14 20 Q. Now, Mr. Reidl, we were talking about the
21 pre-go-live testing that you did at your location on your
22 custom solution.

23 Let's take a look at what's been marked
24 already as Exhibit 145.

09:27:24 25 Can you first identify this document for

1 us, please?

2 A. Sure. Can you --

3 Q. You --

4 A. As we identify, can you zoom in so I can see?

09:27:54 5 This is an e-mail from Jon Woodrum to
6 myself, Dan Lowery, Marcia Weissman, Joe Guagenti, Avery
7 Myrick at LSi, dated Tuesday, November 14th, 2006.

8 Q. Thank you. Do you recall receiving this e-mail
9 back at that time?

09:28:10 10 A. Yes.

11 MR. STAR: Your Honor, I'd like to move
12 Defendant's Exhibit 145 into evidence.

13 THE COURT: Sorry, we'll do that
14 after -- at the appropriate time.

09:28:18 15 MR. STAR: Thank you, Your Honor.

16 THE COURT: We don't have to do it after
17 each exhibit.

18 MR. STAR: Terrific. Thank you.

19 BY MR. STAR:

09:28:24 20 Q. Sir, I notice your SAP is not copied on this
21 e-mail, is that right?

22 A. Correct.

23 Q. All the people that are on the e-mail chain,
24 they're all from either Hodell or IBIS/LSi?

09:28:36 25 A. Yes.

1 Q. And look down at the paragraph, second paragraph.
2 Jon Woodrum's telling you here, "We know there is a
3 performance issue to be satisfied before go-live and we
4 know that lies in/with the In-Flight add-on."

09:28:54 5 So you knew back in November of 2006 that
6 there were problems with the In-Flight add-on,
7 performance problems, right?

8 A. Based on this e-mail, yes.

9 Q. Well, it wasn't just based on this e-mail. It was
09:29:07 10 based on the testing that you yourself were doing?

11 A. I don't recall that we were doing testing yet at
12 this time.

13 It was shortly thereafter. Most of the
14 testing happened in early 2007, to my recollection.

09:29:20 15 Q. Great. Let's look at the testing that was going
16 on.

17 MR. STAR: Bob, let's go to 226, please.
18 And can you blow that up a little bit so we can see it?

19 That part is fine. There we go.

09:30:23 20 BY MR. STAR:

21 Q. Can you identify this document, sir?

22 A. Sure. This is an e-mail from Jon Woodrum to
23 myself, copying several people at LSi on Sunday, November
24 26th of 2006.

09:30:32 25 Q. And you would agree with me at this point in time,

1 November 26th of 2006, you're having conversations with
2 the folks at IBIS/LSi about performance issues, correct?

3 A. Yes.

4 Q. You're actually discussing with them, as it says in
09:30:54 5 the first paragraph, the primary purpose of what you're
6 doing here is to discuss what you're seeing as
7 performance. You're talking about performance issues
8 with your custom software?

9 A. I don't know that it's with custom software or with
09:31:12 10 SAP, but it says performance, what we're seeing is
11 performance and what various areas has been.

12 Q. And what you were seeing as performance was through
13 your testing of this overall custom solution, right?

14 A. I believe this was testing that they were doing on
09:31:31 15 their side. This was likely before we started doing
16 testing. I can't tell you for certain, but this is
17 probably testing they were doing themselves.

18 Q. When is it you believe you actually started doing
19 testing at your location?

09:31:47 20 A. Probably shortly thereafter. I venture to say
21 December of 2006.

22 Q. And when you started doing the testing in December
23 of 2006, you saw problems with the performance of the
24 solution, right?

09:32:03 25 A. Yes.

1 Q. You already said that yesterday?

2 A. Yes, we did.

3 Q. Okay.

4 MR. STAR: Bob, jump to 786, please.

09:32:17 5 Q. Sir, you told us yesterday that in the months
6 leading up to go-live, you had actually planned and then
7 canceled go-live on at least four or five occasions.

8 Do you remember that?

9 A. Yes.

09:32:27 10 Q. And the reasons you were canceling go-live four or
11 five times is because you were seeing poor performance on
12 the solution?

13 A. Yes.

14 MR. CARNEY: Objection, Your Honor.

09:32:37 15 THE COURT: Overruled. Overruled.

16 BY MR. STAR:

17 Q. Sir, will you please take a look at what we've put
18 up here, which is marked as 786?

19 Can you identify this document for us?

09:32:53 20 A. An e-mail from Jon Woodrum to myself with a copy to
21 Dan Lowery on Monday, December 11th, 2006.

22 Q. All right.

23 MR. STAR: Bob, let's take Mr. Reidl to the
24 second page of that e-mail chain. Page 2, Bob.

09:33:29 25 MR. CARNEY: Your Honor, I just want to

1 make a record. This is one of the documents -- this is a
2 document that was never identified as an exhibit that was
3 excluded by Judge Wells.

4 THE COURT: Okay. Go ahead.

09:33:42 5 MR. STAR: Thanks, Your Honor. Just to
6 respond to that.

7 THE COURT: You don't have to respond.

8 MR. STAR: Thank you.

9 BY MR. STAR:

09:33:48 10 Q. Mr. Reidl, identify what we're looking at here,
11 sir.

12 A. This is an e-mail from, looks like from myself to
13 Jon Woodrum and Dan Lowery, dated 12/11/2006.

14 Q. And the subject line is Go Live Check Point and
09:34:02 15 Planning, right?

16 A. Yes, it is.

17 Q. And what you write to Mr. Woodrum and Mr. Lowery is
18 the following: "We'd like to have a commitment from LSi
19 that everything will be working and functional, including
09:34:14 20 the known issues, especially those below, prior to
21 January 8th."

22 Sir, you had known performance issues with
23 your solution as of January -- pardon me -- as of
24 December of 2006, correct?

09:34:26 25 A. Yes, there were issues with the --

1 Q. You went on to say, "Additionally, we'd like a
2 commitment that all functions processes will be fully
3 tested and verified by LSi, using our data on our system
4 as working and fully functional as designed prior to
09:34:49 5 January 8th."

6 Do you see that?

7 A. Yes.

8 Q. You recognize, sir, that performance testing and
9 function testing was vital before going live on this
09:34:59 10 somewhere?

11 A. Performance testing was an important piece of the
12 implementation process, yes.

13 Q. Right. Because you didn't want to go live if you
14 saw bad performance?

09:35:08 15 A. Right.

16 Q. Makes sense.

17 You tell Jon Woodrum and Dan Lowery that
18 you'll delay the go-live until January 8th of '07 but you
19 won't extend it any further.

09:35:21 20 You wanted to go live, right?

21 A. Can you maybe zoom in, tell me where we're looking
22 at?

23 Q. Second paragraph, "We will delay."

24 A. Correct.

09:35:35 25 Q. Okay. But you didn't actually go live for another

1 couple months?

2 A. Right. We went live in March of 2007.

3 Q. Right. And the reason you had further delay was
4 because you continued to see poor performance?

09:35:47 5 A. Yes. We delayed it because of issues that came up
6 during testing.

7 MR. STAR: Bob, go to 508, please.

8 MR. CARNEY: Objection, Your Honor. This
9 is another document that was excluded.

09:36:18 10 THE COURT: Overruled.

11 BY MR. STAR:

12 Q. Sir, can you identify this document, please?

13 A. This is an e-mail from myself to various members of
14 our organization, Hodell-Natco, dated Wednesday, December
09:36:35 15 20th, 2006.

16 Q. And no one from SAP was given this e-mail, right?
17 You didn't send it to them?

18 A. Correct.

19 Q. And the folks that you CC in the recipient list,
09:36:51 20 people like Chiming Wong and Mark Betts, they were part
21 of your IT team that was working on the project with you,
22 correct?

23 A. Correct. They were part of our IT team, and
24 they -- it's important to note that we had no direct
09:37:07 25 conversation with SAP at this point because they were

1 working exclusively through their channel partners so
2 everything we were doing was through them.

3 Q. Sir, thank you. We'll get to that. We're going to
4 cover it. I appreciate that.

09:37:22 5 My question was simple. The folks that are
6 cc'd on this e-mail are the people who are part of your
7 internal IT staff, they're your team for this project,
8 right?

9 A. Not all. You want me to go through them?

09:37:34 10 Q. No, I'll go through them. Terry Phillips is on
11 there. He was part of your IT team, correct?

12 A. He was working with the Radio Beacon product.

13 Q. He was part of your IT team running this project,
14 correct?

09:37:45 15 A. Part of the IT team running this project?

16 Q. Yes, sir.

17 A. He was -- he was working on the Radio Beacon
18 component of it. He later ran a project for us with
19 Profit 21.

09:37:55 20 Q. Let's just be clear. You've already told this jury
21 that the solution you were going to go live on was a
22 three-part solution, it was In-Flight, Radio Beacon, and
23 Business One.

24 Mr. Phillips was working on this project,
09:38:09 25 sir, correct?

1 A. With the Radio Beacon implementation part of it.

2 Q. Thank you. Let's look at your e-mail, the subject
3 of this is SAP Project Update, and it's as of December
4 20th, 2006.

09:38:31 5 Middle way down, go back, please, starts
6 with Paragraph -- keep going. That's fine.

7 The paragraph there that begins with
8 "Performance and speed," do you see that?

9 A. Yes.

09:38:50 10 Q. It says, "Performance and speed -- this continues
11 to be an issue."

12 You knew you were having performance and
13 speed issues. This is as of December 20th of '06, right?

14 A. Right.

09:39:02 15 Q. Goes further, "LSi installed an improved/faster
16 version of In-Flight on Sunday night."

17 Sir, you were having performance problems
18 with In-Flight back in December of 2006?

19 A. Is that a question?

09:39:19 20 Q. Yes.

21 A. Yes, based on this, we were having performance
22 issues on the solution at the time.

23 Q. And you wrote, "In doing transactions in SAP,
24 particularly sales orders, I've found the speed and
09:39:33 25 performance to be slow and frustrating."

1 You were having performance problems
2 specifically with your sales order process months before
3 you went live, correct?

4 A. Correct.

09:39:44 5 Q. Okay. Those are the same performance problems you
6 told us about yesterday that you experienced after
7 go-live; you had, according to you, poor performance
8 after go-live with entering sales orders?

9 A. Correct.

09:40:07 10 MR. STAR: Let's go to 299, Bob.

11 Q. Mr. Reidl, will you identify this document, please.

12 A. It's an e-mail from myself to various members of
13 our organization dated Tuesday, January 2nd, 2007.

14 Q. Okay.

09:40:39 15 A. Regarding an SAP stress test.

16 Q. And you were the primary person at Hodell
17 responsible for running the stress test of this solution,
18 correct?

19 A. Yes. I was overseeing it with LSi's assistance.

09:40:53 20 Q. No assistance, though, from SAP? They weren't
21 involved?

22 A. LSi was their channel partner.

23 Q. Sir, let's just get something straight.

24 You understand LSi and IBIS were separate
09:41:08 25 companies from SAP?

1 A. Correct.

2 Q. Okay. So let's go back to my question.

3 You'd agree with me that SAP itself was not
4 involved in any way, shape, or form with any of your
09:41:20 5 pre-go-live testing?

6 A. Not on our system.

7 I don't know about if they were with LSi on
8 their systems.

9 Q. So no one from SAP was out at your location prior
09:41:29 10 to going live helping you test this solution?

11 A. No.

12 Q. And you weren't telling anybody at SAP what you
13 were seeing when you were testing this solution?

14 A. No, we were working through LSi.

09:41:38 15 Q. You weren't telling SAP what you were seeing when
16 you were testing this solution?

17 A. No. Because we were working with LSi.

18 Q. You weren't sending e-mails to SAP to report to SAP
19 on what you were seeing when you were stress testing this
09:41:51 20 solution?

21 A. No. Again, we were working with LSi.

22 Q. Thank you. I understand, but my questions are
23 simple.

24 You weren't sending information, reports,
09:42:02 25 updates, directly to SAP, were you?

1 A. No, we relied on LSi to do that.

2 Q. Let's go back to your e-mail, January 2nd, 2007.

3 You're still a few months before go-live.

4 And you're writing about stress testing and here's what

09:42:20 5 you write, the second paragraph, "The intent of this test

6 is to make sure that both the hardware and software can

7 handle the load of all users doing their daily activities

8 at the same time."

9 You understood what it meant to stress test

09:42:32 10 a software system, right?

11 A. Yes.

12 Q. And you knew this stress testing had to be done at

13 your location using your computers with your employees

14 and users doing their jobs as they would normally do it?

09:42:50 15 A. Yes.

16 MR. STAR: Jump ahead to 301, please.

17 BY MR. STAR:

18 Q. Sir, can you identify this document for us?

19 A. This is an e-mail from Keith Winn to all, all users

09:43:34 20 and an SAP group that was internal to our company.

21 Q. Mr. Winn was part of your internal IT project team?

22 A. Yes. I believe he was our network administrator.

23 Q. And you would have been copied on this e-mail? You

24 were one of the recipients?

09:43:48 25 A. Yes.

1 Q. And here's what Mr. Winn writes on January 5th,
2 2007, just three days after your e-mail about stress
3 testing.

4 "As we are all aware, the stress tests
09:43:59 5 have shown that there are still issues with how the
6 software is operating."

7 Do you see that?

8 A. Yes.

9 Q. You agree with Mr. Winn's assessment as of January
09:44:09 10 5th of 2007 that there were issues with the software?

11 A. Yes. And I believe that's why we postponed the
12 go-live.

13 Q. And the software he's referring to, that's all the
14 software; it's Business One, plus Radio Beacon, plus
09:44:23 15 In-Flight, that's what you were testing?

16 A. Yes. The solution.

17 Q. Yeah. You actually wanted to see more stress
18 testing done after this, correct?

19 A. Yes. We had to do more testing.

09:44:47 20 MR. STAR: Go to 798, please, Bob.

21 MR. CARNEY: Objection, Your Honor. This
22 is another document that was excluded by Judge Wells in
23 her February 9th, 2015 order.

24 THE COURT: Yes, the objection is
09:45:11 25 overruled.

1 BY MR. STAR:

2 Q. Sir, will you identify what's been marked as 798,
3 please?

09:45:22

4 A. This is an e-mail from myself to Jon Woodrum, dated
5 January 5th of 2007.

6 Q. Look at the -- it's the paragraph beginning, "I'm
7 no expert."

8 Do you see that there?

9 A. Yes.

09:45:34

10 Q. Okay. The sentence on the second line begins as
11 follows: "We will continue to be available for stress
12 tests. However, I want to limit it to one per day at
13 3:00 p.m."

14 Do you see that?

09:45:46

15 A. Yes.

16 Q. And you went on to write, "I'd like to keep our
17 operations running as smoothly as possible, and a half
18 hour interruption times 70 people adds up to a big
19 operational and economic sacrifice."

09:46:00

20 Right?

21 A. Right.

22 Q. You were trying to limit the amount of stress tests
23 you were actually going to do before you went live?

09:46:10

24 A. Yes. One per day was actually a significant amount
25 of stress testing.

1 Q. And you were trying to limit those tests to no more
2 than a half hour, correct?

3 A. Correct.

4 Q. But you told us yesterday that you only actually
09:46:20 5 did four or five stress tests.

6 You stand by that, right?

7 A. I believe so.

8 Q. Okay. You were saying here you were willing to do
9 one per day, but that didn't even happen, did it?

09:46:34 10 You only did four or five of them over the
11 course of weeks?

12 A. I believe -- yeah, I believe we did them when
13 instructed by LSi, when they were prepared to work with
14 us on the stress test.

09:46:44 15 So four or five. May have been more.

16 MR. STAR: Bob, let's go to 57, and I want
17 to focus on the e-mail chain that begins at the bottom of
18 the first page. If you can zoom in there so we can see
19 it. No, no. Just the header so we can see that, Bob.

09:47:24 20 BY MR. STAR:

21 Q. All right. We're going to walk through this chain.
22 Sometimes e-mails are a little bit different because
23 they're broken up over pages, but these are as the
24 documents originally appeared.

09:47:41 25 Sir, can you identify what's been marked as

1 Exhibit 57, please?

2 A. This is an e-mail from myself to Jon Woodrum, Dan
3 Lowery, and Dan Reidl, my brother.

4 Q. And it's January 12th, 2007?

09:48:01 5 A. Correct.

6 Q. Still a couple months before you actually go live?

7 A. Yes.

8 MR. STAR: All right. Bob, go to the
9 second page, please, and blow that up, if you would.

09:48:19 10 Q. Sir, is it your testimony that Hodell required
11 IBIS/LSi to be with you on your premises in order for you
12 to run stress tests? Could you do that alone?

13 A. I believe they were working with us remotely
14 through their office so they would remote into our
09:48:38 15 system.

16 Q. And here's what you report to Mr. Woodrum on
17 January 12th of 2007.

18 You say to him, "As I've stated earlier,
19 when you can show me that the system is working,
09:48:48 20 including all of the major components, I will commit to a
21 go-live date."

22 Sir, you knew as of January, 2007, that the
23 entire system wasn't working in the way you wanted it to,
24 correct?

09:49:01 25 A. Correct. It wasn't ready for go-live.

1 Q. And you point out problems. In fact, you call them
2 in the next paragraph issues with three critical
3 components that need to be satisfied before going live.

4 And then you list them. First one's data
09:49:19 5 conversion.

6 The next one is stress test. Do you see
7 that?

8 A. Yes.

9 Q. You write this: "To our disappointment, this one
09:49:27 10 failed."

11 Your stress testing was failing, wasn't it,
12 sir?

13 A. This one had failed, and I believe the previous one
14 had as well.

09:49:36 15 Q. You were seeing lockups, correct?

16 A. Yes. Here it says, "I believe the original lockup
17 issue has been addressed."

18 Q. Go to the -- pardon me. You say in the second
19 item, "Remaining issues are the display refresh pseudo
09:49:57 20 lockup situation and substantial delays in processing.
21 System is very slow, almost to the point of lockup, in
22 certain parts of the application."

23 Then you write, "Mostly In-Flight apps."

24 Sir, you knew as of January of 2007 that
09:50:13 25 the In-Flight program was causing most of your lockup

1 issues?

2 A. Most of them? That's what I say there.

3 Q. Okay. And you don't mention Business One itself
4 when you mentioned your stress tests and the stress tests
09:50:29 5 having failed, do you?

6 A. No, not here.

7 Q. Okay. And you didn't send this e-mail along to
8 SAP?

9 A. No, I didn't.

09:50:35 10 Q. Then you go on and you talk in your Item Number 3
11 about process testing.

12 Do you see that?

13 A. Yes, I do.

14 Q. You write, "Based on our findings over the past
09:50:48 15 week, this one also failed."

16 Right?

17 A. Right.

18 Q. Then you write, "The base SAPBO," that's Business
19 One?

09:50:58 20 A. Right.

21 Q. You write, "The base Business One applications work
22 fine. However, the major components of the In-Flight
23 program do not."

24 Do you see that?

09:51:06 25 A. Yes, I do.

1 Q. Then you go on to say, "i.e., IPs," what's that?

2 A. Inventory processing.

3 Q. And it was In-Flight that processed your inventory,
4 correct?

09:51:17 5 A. No.

6 Q. In-Flight with Radio Beacon was processing your
7 inventory?

8 A. No. In-Flight with Radio Beacon and SAP Business
9 One was --

09:51:24 10 Q. You needed -- pardon me, go ahead.

11 A. These three components were processing our
12 inventory.

13 Q. Fine. You needed all three of those to process
14 your inventory?

09:51:33 15 A. Correct.

16 Q. You talk about warehouse transfers being a problem?

17 A. Correct.

18 Q. And these are components, as you write, major
19 components of the In-Flight program that weren't working
09:51:43 20 as of January of 2007, right?

21 A. Right.

22 Q. It goes on, you write, "In-Flight portions of the
23 item master record," they weren't working either, were
24 they?

09:51:55 25 A. Based on this e-mail, apparently not.

1 Q. Well, it's not just based on this e-mail. You
2 remember they weren't working, don't you?

3 A. I remember lots of different things, so I have to
4 rely on documentation for some of it.

09:52:11 5 This one says that the item master record
6 wasn't working.

7 Q. Okay. This is your own e-mail, you wrote it?

8 A. Yes.

9 Q. Okay.

09:52:23 10 MR. STAR: Let's go to Exhibit 202, please.

11 Q. Sir, this is a several-page e-mail chain. I'm
12 going to focus on the first page for a moment.

13 Can you identify this document for us?

14 A. Can you zoom in a little bit more? What part are
09:52:50 15 we looking at?

16 Q. Yes. We can hand you a paper copy if you need it,
17 as well.

18 A. This is an e-mail from Dan Lowery to myself and Jon
19 Woodrum and Ross Elliott.

09:53:07 20 Q. Okay. It's back on February 16th of 2007?

21 A. I believe so. I didn't see the date there.

22 MR. STAR: All right. Bob, focus in on the
23 bottom half of the e-mail, please.

24 Q. This is you writing to Jon Woodrum and Dan Lowery,
09:53:31 25 correct?

1 A. Correct.

2 Q. And you're not writing to anybody at SAP?

3 A. No.

4 Q. Okay. Sir, yesterday you were asked some questions
09:53:39 5 about Terry Phillips, and I mentioned his name already
6 today.

7 You considered Terry Phillips to be one of
8 your best IT guys, didn't you?

9 A. Yes. He was a -- working with the Radio Beacon
09:53:51 10 product and had some development experience I think with
11 the website development.

12 Q. Yes. He actually started with your company working
13 in the warehouse but then was going to college to get a
14 computer degree, wasn't he?

09:54:02 15 A. Yes, I believe so.

16 Q. Okay. And during my opening, I referred to
17 Mr. Phillips, we had it up on a demonstrative, as
18 Hodell's IT project manager.

19 Do you remember me saying that?

09:54:13 20 A. I remember you saying that, yes.

21 Q. Okay. And you agree, Mr. Phillips was, in fact, an
22 IT project manager for Hodell, wasn't he?

23 A. He was an IT project manager, not for this project.
24 I was the project manager for this product.

09:54:28 25 He was managing the Radio Beacon component

1 of this project. And later, IT project manager was
2 specifically assigned to him because he took over the
3 role of project manager for the Profit 21 implementation.

09:54:46 4 Q. Thank you for clarifying, but on this project,
5 which included integrating Radio Beacon and custom -- the
6 custom In-Flight application, Mr. Phillips was an IT
7 project manager on a significant part of the project,
8 correct?

9 A. On the Radio Beacon part of it, yes.

09:55:00 10 Q. Thank you. And you're writing here to Jon Woodrum
11 and Dan Lowery about comments from Terry on February
12 16th, 2007.

13 Do you see that?

14 A. Yes.

09:55:10 15 Q. And, in fact, you write in the third paragraph of
16 your e-mail that Terry is one of your best IT guys.

17 That's what you thought of him?

18 A. Um-hmm.

19 Q. Yes?

09:55:26 20 A. Yes. He was very good with the Radio Beacon
21 integration part of it, yes.

22 Q. And you trusted his advice, of course?

23 A. Yes. Certainly when it came to Radio Beacon.

24 Q. Okay.

09:55:38 25 MR. STAR: And, Bob, can you put that back

1 up? Same one. 202. Blow that bottom part up, please.

2 Q. You go on to write in the paragraph that begins, "I
3 do understand," halfway through that you write, "Terry
4 has played the role of project manager and has helped to
09:56:20 5 develop the integration. I'd like for the integration to
6 be working as soon as possible."

7 Do you see that?

8 A. Yes.

9 Q. And Mr. Phillips, earlier in this e-mail chain,
09:56:33 10 gave you his thoughts and his comments about what was
11 happening on this solution, didn't he?

12 A. I don't know, I don't have it.

13 Q. Hold on. We're not there yet.

14 MR. STAR: Bob, go to Page 2, halfway down.

09:57:04 15 Q. This is an e-mail from Mr. Phillips to you.

16 Subject is RB/SAP, that's Radio Beacon/SAP, right?

17 A. Right.

18 Q. And it gives you an update list of pending issues
19 for the Radio Beacon/SAP integration, correct?

09:57:16 20 A. Correct.

21 Q. Okay. I'm going to go to the last part of his
22 e-mail, which is on Page 4 at the bottom.

23 MR. STAR: Blow that whole thing up,
24 please.

09:57:45 25

1 BY MR. STAR:

2 Q. Sir, on February 16th, 2007 as part of Mr.
3 Phillips' e-mails to you, he gives you further comments,
4 and he writes at the bottom of the first paragraph there,
09:57:59 5 under further comments, "I feel that I will need a full
6 week to test and confirm that we are ready to go live
7 given the state of the integration between Radio Beacon
8 and SAP."

9 Do you see that?

09:58:08 10 A. Yes.

11 Q. He goes on in the next paragraph, about two-thirds
12 of the way through, "I have also been very frustrated
13 with the lack of testing and documentation on the part of
14 LSi."

09:58:25 15 Did you agree with Mr. Phillips at this
16 time?

17 A. Did I agree with him?

18 Q. Yeah.

19 A. I'm not -- I don't recall.

09:58:35 20 That's what he wrote, that he was
21 frustrated with the lack of testing on the part of LSi,
22 so I --

23 Q. This is --

24 A. I had no reason to disagree.

09:58:44 25 Q. This is just a couple of weeks before you actually

1 go live, right?

2 A. Roughly three weeks.

3 Q. Okay. And he signs off at the bottom of that
4 e-mail as project manager. That was his title, wasn't
09:58:54 5 it?

6 A. Yes. Again for the Radio Beacon integration.

7 Q. Thank you. Flip ahead, please, to Exhibit 899,
8 Bob. You can blow the whole thing up, if you don't mind?

9 A. Do you guys have some spots on the screen? I've
09:59:28 10 got a couple of, I don't know, yellow or green spots.
11 Just my monitor.

12 THE COURT: You can click on either the
13 bottom right or left, I forget, and erase those.

14 THE WITNESS: I can? I just made it worse.

09:59:44 15 THE COURT: Did you? That's like Jon
16 Madden, you can do the --

17 THE WITNESS: I'll work around it.

18 BY MR. STAR:

19 Q. Sir, can you identify this document, please?

09:59:54 20 A. This is an e-mail from me to Jon Woodrum, Marcia
21 Weissman, Terry Phillips, Eric Johnson, Floyd Lesti
22 regarding inventory.

23 Q. The date is March 8th, 2007, that's the day after
24 you went live?

10:00:09 25 A. Right.

1 Q. You weren't copying anybody from SAP, right?

2 A. Right.

3 Q. And the subject of your e-mail is inventory.

4 Do you see that?

10:00:20 5 A. Yes.

6 Q. And basically you're talking about problems with
7 syncing up your inventory, correct?

8 A. Can I read through the document?

9 Q. Yeah, go right ahead.

10:01:08 10 A. Okay. What was your question again?

11 Q. Sure. I'll ask a different one.

12 MR. STAR: What happened to the document?

13 THE COURT: That was me. I must have
14 messed it up. Trying to get those green -- can you get
10:01:30 15 them off when it goes back on?

16 THE WITNESS: You fixed it. I don't see
17 any green spots.

18 THE COURT: Fixed it? I see nothing on
19 there.

10:01:38 20 THE WITNESS: Fixed the green spots.

21 THE COURT: I sure did. You're on the
22 front table computer now. Okay.

23 THE WITNESS: All fixed. Thank you.

24 BY MR. STAR:

10:02:05 25 Q. All right. You've had a chance to look at what

1 we've marked as Exhibit 899.

2 This is an e-mail from March 8th, 2007 from
3 you to some folks at IBIS/LSi?

4 A. Yes.

10:02:15 5 Q. And internally at Hodell, right?

6 A. Yes.

7 Q. Including Terry Phillips?

8 A. Yes.

9 Q. Okay. And you're talking about inventory, that's
10:02:24 10 the subject?

11 A. Yes.

12 Q. All right. And you're finding at this point in
13 time right after go-live that you're having to manage, in
14 your words, two different inventories.

10:02:35 15 Do you see that under Item 1, two-thirds of
16 the way down?

17 A. Yes.

18 Q. The line says "It appears"?

19 A. "It appears that we are faced with the same
10:02:48 20 problem we had with Radio Beacon and FACTS. We will have
21 to manage two different inventories."

22 Q. Right. One of the things you told us yesterday was
23 that after go-live you were having inventory problems,
24 you couldn't track your inventory you said, you remember
10:02:59 25 that?

1 A. Yes.

2 Q. You said sometimes you couldn't even find inventory
3 items and you had to just write them off.

4 Do you remember that?

10:03:05 5 A. Correct.

6 Q. Sometimes you said you were buying extra inventory
7 because you couldn't figure out what you had in stock, do
8 you remember that?

9 A. Yes.

10:03:12 10 Q. And here you're writing that, "It appears we are
11 faced with the same problems we have had with Radio
12 Beacon and FACTS. We will have to manage two different
13 inventories."

14 Sir, you knew of the inventory issues
10:03:28 15 before you went live, correct (beginning quotes)?

16 A. This is a document after we went live.

17 Q. I understand. You're talking about here, sir, the
18 same problems.

19 Of course you're referring to problems that
10:03:38 20 existed before you went live, right?

21 A. This is -- what I say is between Radio Beacon and
22 FACTS. Different, different solution.

23 Q. Let's just go back to this.

24 You went live on a three-part solution?

10:03:57 25 A. Right.

1 Q. Radio Beacon, custom In-Flight, and base Business
2 One, right?

3 A. Right.

4 Q. And you tested that three-part solution.

10:04:07 5 You just told us --

6 A. Right.

7 Q. -- you tested that three-part solution before you
8 went live?

9 A. Yes.

10:04:12 10 Q. And you told the jury yesterday that after go-live,
11 you were having inventory issues, you couldn't track your
12 inventory, right?

13 A. Right.

14 Q. And here you're writing the day after go-live that
10:04:25 15 you're faced with the same problems "We have had with
16 Radio Beacon and FACTS."

17 So you're not telling this jury that you
18 just found out the day after go-live about the inventory
19 problems that were being caused by Radio Beacon and
10:04:40 20 FACTS, are you?

21 MR. CARNEY: Objection, Your Honor.

22 THE COURT: Overruled.

23 A. Can you -- can you restate that question? Because
24 we're talking about two different systems here.

10:04:50 25 Q. It's all one system, isn't it? It's all integrated

1 together, sir?

2 A. What I mentioned specifically is having had with
3 Radio Beacon and FACTS.

4 Q. Sir, I had a question. It's all one system?

10:05:01 5 MR. CARNEY: Objection, Your Honor.

6 THE COURT: Overruled.

7 BY MR. STAR:

8 Q. And it's all integrated together?

9 A. FACTS was not part of this solution. No. This
10:05:09 10 says Radio Beacon and FACTS. FACTS was not part of the
11 solution that we're talking about.

12 Q. But you're having the same old problems you were
13 having with Radio Beacon all along, right, sir?

14 A. What I identify is, yes, we had problems that were
10:05:21 15 similar to the problems that we had with Radio Beacon and
16 FACTS.

17 Q. So for years, for years, you've been having
18 inventory problems with Radio Beacon, correct?

19 A. With Radio Beacon and FACTS.

10:05:33 20 Q. And you tested that same Radio Beacon software when
21 you tried to add it on to Business One, and you saw
22 inventory problems before you went live on your new
23 solution, correct?

24 A. Yes, we had inventory problems.

10:05:46 25 Q. Thank you.

1 During your direct testimony yesterday and
2 again today, you told us a lot, and you explained to the
3 jury, that Hodell had slow computer performance after
4 go-live. That's your view of what happened, right?

10:06:18 5 A. Yes.

6 Q. Sometimes you had lockups, you said?

7 A. Yes, on the solution.

8 Q. I noticed you didn't go through any documents which
9 memorialized exactly how long it was taking for Hodell to
10:06:28 10 process any particular transactions, did you?

11 A. No.

12 Q. The attorneys didn't show you any documents like
13 that?

14 A. I don't believe so.

10:06:36 15 Q. And you and I have talked about that subject
16 before.

17 You agree Hodell never sat down and did a
18 study and wrote down how long it was taking to complete
19 any particular transaction.

10:06:49 20 You didn't keep a log of anything like
21 that, did you?

22 A. We didn't keep a log of how long it took to enter a
23 sales order.

24 Our salespeople knew how long it took it to
10:07:00 25 enter a sales order, and they knew and it took extra

1 long. They knew the difference.

2 Q. Mr. Lambert, in his opening yesterday, told the
3 jury that even on your old FACTS system, it would
4 sometimes take hours to enter a very long sales order.

10:07:19 5 Do you remember him saying that?

6 A. I believe so. I'm not a hundred percent certain.

7 Q. And that was true, wasn't it?

8 On your old system, sometimes your sales
9 orders would take hours to enter, they were very long on
10 some occasions?

10:07:36 10
11 A. Very long ones might take an hour, maybe two hours.
12 But we're talking probably 500 or a thousand line orders
13 on FACTS, but not typically.

14 Q. And Hodell doesn't have a single document that
10:07:55 15 actually measures the speed at which it was taking your
16 sales team to enter sales orders, you just don't have
17 anything like that to show the jury, do you?

18 A. I don't believe we do. LSi might.

19 Q. Now, it's been established that Hodell ran on
10:08:15 20 Business One plus In-Flight and Radio Beacon from March
21 of 2007 through until April 1st of 2009, so a period of
22 two years, right?

23 A. We were on the system two years.

24 Q. Okay. You filed the complaint and started the
10:08:30 25 lawsuit in this case in November, 2008.

1 Do you remember that?

2 A. Yes.

3 Q. So when you filed the complaint in this case, you
4 were actually running Business One plus In-Flight plus
10:08:42 5 Radio Beacon?

6 A. Yes, but not effectively.

7 Q. You prepared for months in advance of filing that
8 complaint, correct? It didn't just happen out of the
9 blue?

10:08:55 10 A. It would have been a couple of months.

11 Q. Yeah. For a couple of months.

12 And you never took the time to sit down and
13 document while you were running our system what actual
14 performance you were seeing? You didn't do that, did
10:09:14 15 you?

16 A. Such as?

17 Q. Such as sitting down and tracking with a log how
18 long it was taking to enter a sales order, how long it
19 was taking to update a sales order; you didn't do
10:09:24 20 anything like that?

21 A. I don't believe we did, no.

22 Q. You never took the time to stand over somebody's
23 shoulder with a video camera and video their screen and
24 show --

10:09:31 25 MR. CARNEY: Objection, Your Honor.

1 THE COURT: Overruled.

2 MR. STAR: Thank you.

3 BY MR. STAR:

4 Q. You never took the time in the months leading up to
10:09:36 5 filing your complaint while you were running Business One
6 plus Radio Beacon plus In-Flight, to stand with a user
7 and video and record what was actually happening on their
8 screen, did you?

9 A. We relied on --

10:09:48 10 Q. Sir, you never did that, did you?

11 A. Can I explain? We --

12 Q. The answer calls for a -- the question calls for a
13 yes or no.

14 A. We didn't measure that. We relied on our
10:09:58 15 salespeople and our employees and the experiences that
16 they had and observing them, but we didn't stand over
17 them with a video camera and record the screen, if that's
18 what you're asking.

19 Q. It is. And you never ran a transaction log report
10:10:14 20 out of your custom software solution to figure out how
21 long it was taking to do anything in the process,
22 correct?

23 A. We -- we would have relied on LSi to do that.

24 Q. So you never ran a transaction log report, did you?

10:10:27 25 A. We didn't. I don't know if LSi did.

1 Q. Now, Mr. Carney, when he was questioning you,
2 talked about patches that were installed on the system,
3 and as I understood your testimony, let's just make sure
4 we've got this right, your view is the patches that were
10:10:46 5 put on really made only marginal improvements in
6 performance?

7 That's your view?

8 A. Yes. There were a number of patches that were
9 released over time. They improved things here and there,
10:10:58 10 but overall the system's slowness and lockups were always
11 an issue.

12 Q. Let's go to Exhibit 320, please.

13 Bob, if you can maybe blow up all the text
14 on that page so he can see it. I'm going to zoom in on
10:11:23 15 some spots. I just want to see if you remember this
16 document, sir.

17 Can you identify it for us, please?

18 A. Are we looking at the top or the bottom?

19 Q. Well, we're going to work at the bottom. I just
10:11:35 20 want to see, first off, if you recall this e-mail.

21 A. This is an e-mail from myself to Jon Woodrum and
22 Dan Lowery, dated 5/22 of 2007.

23 Q. All right. So you're a couple months after go-live
24 at this point, right?

10:11:51 25 A. Right.

1 Q. All right.

2 MR. STAR: Bob, let's focus in on the
3 bottom e-mail there from Jon Woodrum to Kevin, please.

4 Q. Jon's reporting that he made a visit out to your
10:12:11 5 St. Louis location.

6 Do you recall him doing that?

7 A. Yes.

8 Q. And he says, "The visit to the St. Louis store," he
9 was talking about your operation in St. Louis, "was a
10:12:21 10 really good one," right?

11 A. Yes.

12 Q. Okay. Go to the next page, Bob, and zoom in on the
13 top.

14 This is the continuation of Mr. Woodrum's
10:12:47 15 e-mail. He writes, "Cain and I" -- Cain was his son,
16 correct?

17 A. Yes.

18 Q. He writes, "Cain and I" -- oops. Here we go.

19 "Cain and I were there from about 7:15 to
10:13:15 20 until near noon."

21 Right, so about five hours he was at the
22 St. Louis store.

23 Do you remember that happening?

24 A. Yes.

10:13:21 25 Q. And here is what he writes. "Mostly observed

1 deliveries and orders (the areas reported as previously
2 the most difficult due to performance). But we did
3 observe and visit with Melissa in accounting as well.
4 Cain helped her on some specific questions while there.
10:13:39 5 Marty entered a 91 line order."

6 He goes on to write, "It never slowed down
7 throughout the order and took 2-3 seconds to update when
8 finished."

9 Do you see that?

10:13:52 10 A. Yes.

11 Q. You weren't there, were you?

12 A. No, I was not.

13 Q. You didn't have any reason to dispute that
14 Mr. Woodrum and his son, Cain, actually sat with a user
10:14:04 15 name Marty and observed him entering a 91-line sales

16 order, you didn't dispute that, do you?

17 A. I had no reason to dispute it.

18 Q. And you'd agree that if a 91-line order for Hodell
19 was entered and never slowed down through the process and
10:14:22 20 took only two to three seconds to update, that was

21 perfectly acceptable performance in your mind, right?

22 A. That was -- you have to observe the time they were
23 there. They were there 7:15 until noon when not all of
24 our users were on.

10:14:38 25 Q. Sir, that's not my question.

1 A. All of our users were on in the afternoon.

2 Q. You're not answering the question that I've put to
3 you.

4 A. Okay.

10:14:44 5 Q. You can explain it later when your counsel wants to
6 question you.

7 My question was different.

8 Your contention in this case is that Hodell
9 had slow software performance, correct?

10:14:55 10 A. Correct.

11 Q. This is a report to you from Jon Woodrum and his
12 son, Cain, after they went to your store in St. Louis a
13 couple months after go-live, right?

14 A. Right.

10:15:07 15 Q. And we went through it. He says they observed
16 Marty entering a 91-line order.

17 My question to you, sir, in your business,
18 if Marty was able to enter a 91-line order with no
19 slowdown and it took only two to three seconds to update,
10:15:23 20 that would be perfectly acceptable performance for
21 Hodell, correct?

22 A. If that performance was sustainable, yes.

23 MR. STAR: Stay on that e-mail, Bob. Go
24 back to the first part of it.

10:15:41 25 Go back to the first page, the top.

1 Q. So you respond to Mr. Woodrum, here's your e-mail.
2 You say you're going to forward an e-mail with a summary
3 of comments from your branch managers and then you write
4 this: "In short, while there were marginal improvements
10:16:11 5 in certain areas (large orders particularly) overall the
6 system is still far too slow."

7 So you wouldn't accept what Mr. Woodrum was
8 saying, even though you weren't there to observe what he
9 saw, right?

10:16:24 10 A. I was disputing because I had gathered, it shows
11 that I had gathered information from all of our branch
12 managers.

13 Q. But, you personally weren't there and you
14 personally can't dispute what Mr. Woodrum actually
10:16:37 15 observed, can you?

16 A. I can't dispute what he observed.

17 Q. Thank you.

18 THE COURT: Can we break for our morning
19 recess?

10:16:43 20 MR. STAR: Certainly, Your Honor. Thank
21 you.

22 THE COURT: Okay, folks. We'll take 15 or
23 20 minutes. Keep in mind the admonition and we'll be
24 back in about 20 minutes.

10:16:52 25 THE CLERK: All rise.

1 (Jury out) .

2 (Recess taken) .

3 (Proceedings resumed in presence of the
4 jury as follows:)

10:38:24 5 THE COURT: You may continue.

6 BY MR. STAR:

7 Q. Mr. Reidl, yesterday when you testified and again
8 this morning, as I understood your testimony, you contend
9 that after you went live and you were having discussions
10:38:46 10 at that point with folks from SAP, you believe SAP wasn't
11 telling you everything.

12 That's your view, right?

13 A. Correct.

14 Q. You told us yesterday, though, that there was a
10:38:56 15 conference call on April 17th, 2007 that included a bunch
16 of people from SAP.

17 Do you remember that?

18 A. Yes.

19 Q. And you were on that call?

10:39:05 20 A. Yes.

21 Q. And you remember being told by Dirk Boessmann of
22 SAP during that call that SAP believes you at Hodell were
23 pushing the upper limits in terms of users and your
24 database size at Hodell, right?

10:39:21 25 A. Right.

1 Q. Okay. You were told that during the call by SAP?

2 A. Yes, and I subsequently questioned that.

3 Q. Today you offered some testimony about what you
4 think happened to your company after go-live, and
10:39:42 5 Mr. Lambert during his opening yesterday told the jury
6 that Hodell nearly went out of business.

7 And let's just be sure we have your
8 position clear. You're telling the jury that you blame
9 whatever you think happened just on Business One,
10:39:54 10 correct?

11 A. This, this, yes, this software system failed
12 miserably and impacted our company in a big way.

13 Q. Thank you for clarifying.

14 You're saying the software system. So what
10:40:07 15 you're actually telling the jury is you think whatever
16 problems you had and whatever harm you might have
17 suffered came from the multi-component solution Radio
18 Beacon, the custom In-Flight application, and in your
19 view the base Business One program, right?

10:40:23 20 A. No. Business One.

21 MR. CARNEY: Objection.

22 THE COURT: Overruled.

23 BY MR. STAR:

24 Q. Pardon?

10:40:26 25 A. Business One.

1 Q. So you're laying the blame completely at the feet
2 of the core Business One application, that's your view?

3 A. The core Business One application could not handle
4 our user, number of users.

10:40:37 5 Q. Sir?

6 A. Number of users.

7 Q. Sir, I asked you a question that required a yes or
8 no answer, I think. You can clarify it later on if your
9 attorney wants to ask you about.

10:40:48 10 Your position, what you're telling this
11 jury, is that you believe whatever problems or harm you
12 might have suffered after go-live were solely because of
13 the core Business One piece of this solution, that's your
14 view?

10:40:58 15 A. Business One and, as I said this morning LSi, they
16 did not represent some of the literature that was out
17 there at the time.

18 Q. But as far as the three pieces of the software,
19 you're blaming just the core Business One piece, correct?

10:41:13 20 A. The core Business One piece was the major component
21 that contributed to the performance issues.

22 Q. Sir, you have no technical background, do you?

23 A. Only through work experience.

24 Q. Okay. You've never written software code?

10:41:25 25 A. No, I haven't.

1 Q. You're not a software expert?

2 A. No. I don't want to be.

3 Q. Okay. You don't have any experience or training
4 that allows you to offer an opinion as to what might have
10:41:39 5 caused a performance problem in a multi-component
6 Software Solution, do you?

7 A. No. Again my experience is through work
8 experience.

9 Q. Thank you. Today you said you had, in your view,
10:41:54 10 productivity losses.

11 You didn't show the jury any documents
12 about that, did you?

13 A. I don't believe so.

14 Q. You said you had to hire extra people. You didn't
10:42:02 15 tell the jury the names of any of those people, did you?

16 A. No.

17 Q. You told the jury that you somehow had reputation
18 damages, but you didn't show the jury any documents about
19 that either, right?

10:42:12 20 A. No documents.

21 Q. Now, it's been established that you went off of
22 Business One at the end of March of '09, and switched on
23 to Profit 21, the next Software Solution, at that point,
24 correct?

10:42:27 25 A. Correct.

1 Q. And what you've said to this jury concerning the
2 time you were on Business One is you've contended, and
3 you told them today, that you lost customer orders and
4 you couldn't fulfill orders that came in, right?

10:42:45 5 That's your view?

6 A. Yes.

7 Q. But again, you don't have a single document, a
8 single piece of paper, a memo, an e-mail, anything that
9 actually records or memorialized that Hodell lost any
10:42:58 10 customer or any order at all, right?

11 A. Losing orders, you don't -- you know --

12 Q. Sir --

13 A. Can I explain?

14 When --

10:43:07 15 Q. You can explain when your attorney wants to ask you
16 the question.

17 My question's simple?

18 A. Can you repeat that?

19 Q. Yeah. I'm correct that you don't have, and Hodell
10:43:20 20 does not have, a single piece of paper, an e-mail, a
21 memo, a note, a record from its business system, showing
22 that you lost a single customer, a single sale, or a
23 single order while you used Business One, Radio Beacon,
24 and In-Flight, correct?

10:43:35 25 A. No. Our business system wouldn't -- wouldn't track

1 that.

2 Q. You don't have a single piece of paper, do you?

3 A. Not that I know of.

4 Q. Thank you. And you're the president of the

10:43:46 5 company, yes?

6 A. Yes.

7 Q. You told us yesterday when you introduced yourself

8 to the jury that you're in charge of the sales operation,

9 right?

10:43:55 10 A. Yes. And the most important --

11 Q. You're in charge of the sales operation, yes?

12 And as the person at Hodell in charge of
13 the sales operation, there would be nobody in the company
14 better than you to know if you actually lost a customer
10:44:11 15 or lost a sale, right?

16 A. Right.

17 Q. Okay.

18 A. And the sales organization reported to me, so the

19 feedback I was gathering throughout our --

10:44:21 20 Q. I'm going to stop you right there.

21 MR. STAR: Your Honor, he's about to try to
22 get some hearsay. I asked him a simple question. I
23 would like an answer.

24 THE COURT: Try to answer the question

10:44:31 25 that's asked.

1 BY MR. STAR:

2 Q. We talked about this when you and I were together
3 before some years back.

4 You agree with me that Hodell, during the
10:44:54 5 period it ran its custom Software Solution, was actually
6 able to fulfill and take every single order that came in
7 the door while you ran that software for two years,
8 right?

9 A. Every single order that came through the door? Not
10:45:12 10 every single order. That builds into backlog. But the
11 way we were able to do that is by working long hours,
12 having every person dedicated to entering those orders,
13 managing those orders, and doing whatever we could.

14 And we had many -- we had workarounds.
10:45:29 15 People would come in early and work late.

16 Q. Sir, you fulfilled the orders that came in the door
17 while you ran the custom software for two years, correct?

18 A. Yes.

19 Q. Thank you.

10:45:37 20 A. With significant more effort and expense.

21 Q. We'll get into that. We'll get into the time it
22 took you. In fact, let's do it right now.

23 I'm going to hand you a hard copy, just so
24 you have it --

10:45:48 25 MR. STAR: Your Honor, do you mind if I

1 approach?

2 THE COURT: Go ahead.

3 MR. STAR: Bob, put this up on the screen.

4 It's going to be Exhibit 24, please.

10:46:07 5 BY MR. STAR:

6 Q. Sir, can you tell us what -- we'll wait until it
7 comes up on the screen.

8 Mr. Reidl, can you identify what's been
9 marked as Exhibit 24, please?

10:46:54 10 A. Yes. These are summary financial statements for
11 our organization.

12 Q. These are Hodel business records showing your
13 financials over the course of a period of years?

14 A. Yes.

10:47:06 15 Q. Okay. It shows things like gross sales, net sales,
16 total hours worked, those sorts of things?

17 A. Correct.

18 Q. And it goes from the period of 2002 up through the
19 end of the period you used Business One, In-Flight, and
10:47:24 20 Radio Beacon, March, 2009, correct?

21 A. Correct.

22 Q. Sir, we've gone through this, you and I, before?

23 A. I recall.

24 Q. Okay. And if we went through each of the gross
10:47:40 25 sales figures, we'd find that 2008, the year, the only

1 full calendar year you ran Business One, plus In-Flight
2 and Radio Beacon, Hodell earned its most gross sales
3 ever, right?

4 A. Yes. Gross sales; not net profit.

10:48:00 5 Q. Gross sales. Thank you, sir.

6 A. Gross sales.

7 Q. In fact, let's try to do it this way. We've got a
8 demonstrative. Let's walk through it and let's see if
9 you agree with what we've got on there. We will iron out
10:48:54 10 our easel issues.

11 Sir, you can track with me --

12 MR. STAR: Joe, can you move it back a
13 little bit so I can see it also, please?

14 Q. Can you see all the numbers on there? Is that
10:49:28 15 close enough for you?

16 A. I can see the big ones.

17 Q. Great. And if you go on your document, your
18 Exhibit 24 there, sir, that's your financial record.

19 A. Yes.

10:49:36 20 Q. You can confirm for me by going through each of the
21 years 2002 through 2008 which are in the document that
22 the annual gross sales figures we have listed here in
23 this column are correct, right?

24 Will you do that for us?

10:49:48 25 A. Sure. Yeah, they look to be correct.

1 Q. Okay. And you agree that the only full year you
2 used Business One, you had the most gross sales, correct?

3 A. Correct.

4 Q. 43.8, almost 43.9 million?

10:50:06 5 A. Correct.

6 Q. It's the most gross sales your company has ever
7 made?

8 A. Correct.

9 Q. It happened while using Business One, plus
10:50:12 10 In-Flight, plus Radio Beacon?

11 A. With great difficulty, yes.

12 Q. Thank you.

13 And by the way, if we did that same
14 exercise with Hodell's net sales out of your business
10:50:47 15 record, we'd also find that in 2008, you had the highest
16 net sales in company history, right?

17 A. Yes. Net sales is gross sales minus various
18 returns, allowances.

19 Q. Your net sales and your gross sales were highest in
10:51:04 20 2008 when you ran Business One?

21 A. Yes.

22 Q. In-Flight, and Radio Beacon?

23 A. Yes. Again, with great difficulty.

24 Q. Sir, you agree with everything we have on this
10:51:18 25 demonstrative, correct?

1 A. Yes.

2 MR. STAR: Your Honor, I would like to add
3 this as another exhibit. I don't know what our next
4 exhibit number is, Alex.

10:51:27 5 MR. HAYDEN: 907.

6 MR. STAR: For Defendant's 907. We'll mark
7 that later.

8 THE COURT: Okay.

9 BY MR. STAR:

10:51:47 10 Q. Let's break down some of the numbers a little bit,
11 sir.

12 MR. STAR: Bob, go to in Document 24,
13 Exhibit 24. It's going to be the consolidated calendar
14 year statement for 2008, please. Yeah, keep going, sir.

10:52:38 15 Bob, can you focus on the column that has
16 October -- oops, I touched it. Here we go. Focus on the
17 column that has October, please.

18 MR. MILLER: Just to be clear, 2006?

19 MR. STAR: 2008. Thank you.

10:53:00 20 Sorry, you've got 2006 up. We need to go
21 2008, pull out October, 2008.

22 Keep going. Next page.

23 BY MR. STAR:

24 Q. Okay. And, sir, you've got a paper copy there so
10:53:36 25 you can work through it with me.

1 You agree what we've blown up here is the
2 column for October of 2008, right?

3 A. Yes.

4 Q. And you and I talked about this before. Gross
10:53:48 5 sales in October, 2008 were \$4,157,000, and that was the
6 highest month of gross sales Hodell ever had?

7 A. Yes.

8 Q. And if we go down about halfway through the page,
9 in the left-hand column, under the gray break, there's an
10:54:08 10 entry on the left for warehouse employees.

11 Do you see that?

12 A. I'm sorry, where?

13 Q. Warehouse employees, do you see the column on the
14 far left?

10:54:19 15 A. Yes.

16 Q. Warehouse employees are folks that are actually
17 working in your warehouse and picking and processing
18 orders as they come in and shipping them out, right?

19 A. Right.

10:54:27 20 Q. And if you track over to October, the column for
21 October, 2003, you had 83 warehouse workers, right?

22 A. Yes.

23 Q. So you were able to fulfill the highest gross sales
24 in company history with 83 warehouse workers in October,
10:54:49 25 2008 while running Business One, plus In-Flight, plus

1 Radio Beacon, right?

2 A. Yes.

3 Q. For comparison purposes --

4 MR. STAR: Bob, go back to 2007.

10:55:21 5 Q. -- and let's look at the column for October of
6 2007. Pardon me, I'm sorry, look at the column for
7 February of 2007, just before you started on Business
8 One, plus In-Flight and Radio Beacon.

9 A. February?

10:55:47 10 Q. Yes, sir.

11 A. 2007?

12 Q. February, 2007, was the last month you were on your
13 old software system, correct?

14 A. Correct.

10:55:59 15 Q. And that month you had gross sales of 3.29 million?

16 A. Correct.

17 Q. So nearly a full million less in gross sales than
18 you did in October, 2008, while you ran Business One and
19 In-Flight and Radio Beacon?

10:56:16 20 A. Correct.

21 Q. And in February of 2008, if we look at how many
22 warehouse employees you had, I'm sorry, February, 2007.
23 I misspoke. If you look at how many warehouse employees
24 you had, it was 91, correct?

10:56:32 25 A. Correct.

1 Q. So in February, 2007 while you were on your old
2 FACTS system, you needed 91 people in the warehouse to
3 put out 3.29 million in gross sales, correct?

4 A. Correct.

10:56:47 5 Q. But in October of 2008, while you were on Business
6 One and Radio Beacon and In-Flight, you had eight less
7 warehouse workers, yet you put out nearly a million
8 dollars more in gross sales, correct?

9 A. Correct.

10:57:04 10 Q. Thank you. So you had less people shipping
11 product, but you were making more money, correct?

12 A. We also -- we also had temporary workers to help
13 bridge that gap.

14 Q. Temporary workers are not shown on this record, are
10:57:24 15 they?

16 A. I don't believe so. They would have been under
17 operating costs somewhere.

18 Q. In fact, there's no document that you've produced
19 to SAP in this case that actually lists out your number
10:57:38 20 of temporary workers or the number of hours they worked?

21 A. No, we don't track that. We just know that there's
22 cost involved.

23 Q. So you don't have a record to suggest -- that would
24 support what you're actually suggesting, that you, as I
10:58:06 25 understand it, you needed more temp workers while you

1 were running Business One?

2 You don't have any documents to support
3 that, do you?

4 A. I don't believe so.

10:58:13 5 Q. You can put that one away.

6 Now, after you left Business One and Radio
7 Beacon and FACTS and you went to your next solution, you
8 told the jury that was called Profit 21 or P 21, right?

9 A. Correct.

10:58:39 10 Q. And you started on Profit 21 in April, 2007?

11 A. Yes. That sounds correct.

12 Q. And when Mr. Carney was questioning you, you told
13 the jury that you spent lots of money, it cost you I
14 think you said something like a million dollars to get
10:58:56 15 Profit 21, to buy their software and to implement it, but
16 you don't have a single document or record that supports
17 those costs, do you?

18 A. I believe we do.

19 Q. You've not shown it to the jury, have you?

10:59:10 20 A. I don't know that we have, no.

21 Q. Okay. Well, I'll tell you, we haven't seen your
22 actual invoices or canceled checks. They weren't
23 produced to us, were they?

24 MR. CARNEY: Objection, Your Honor. Is he
10:59:21 25 testifying?

1 THE COURT: Ask a question.

2 BY MR. STAR:

3 Q. Your actual checks, canceled checks, records of
4 payment for costs related to Profit 21, they weren't
10:59:29 5 produced in this case, were they?

6 A. I'm not sure if they were or weren't.

7 I believe the agreement was, the contract
8 was, that showed the price, showed the price that we
9 paid.

10:59:39 10 Q. Let's look at what you were telling Profit 21 after
11 you went live on their software and left your custom
12 solution. Let's take a look at Exhibit 320, please.

13 MR. STAR: Can you blow that up so

14 Mr. Reidl can see it better?

11:00:11 15 BY MR. STAR:

16 Q. Mr. Reidl, can you identify this document, please?

17 A. Sure. It's an e-mail from myself to Jon Woodrum
18 and Dan Lowery, dated 5/22/07.

19 Q. Oh, pardon me. I've got the wrong exhibit in front
11:00:25 20 of me. My mistake. My mistake.

21 A. I think we went through this one already.

22 Q. I lost my spot. I meant to go to Exhibit 277. My
23 apologies.

24 MR. CARNEY: Objection, Your Honor. This
11:00:39 25 again was excluded pursuant to Judge Wells' February --

1 THE COURT: Objection's overruled.

2 BY MR. STAR:

3 Q. Sir, can you identify this document?

11:01:00

4 A. This is an e-mail from Jon Snow to himself, myself,
5 and other people at Activant.

6 Q. Act -- sorry, go ahead.

7 A. And Joe Vislocky from our company.

8 Q. And Activant is the company from whom you purchased
9 Profit 21, correct?

11:01:13

10 A. Yes. And I said later -- yesterday I said Epicor
11 but Epicor bought them later, yes.

12 Q. We'll just call it Profit 21 if that's okay. It
13 will be less confusing for everybody.

14 A. Right.

11:01:25

15 Q. And below the e-mail from Mr. Snow is an e-mail
16 from you, and you're writing to people at Profit 21,
17 right?

18 A. Right.

11:01:39

19 Q. This is May 22nd, 2009, about seven weeks after
20 you've gone live on the Profit 21 system, correct?

21 A. Right.

22 MR. STAR: Bob, go down to Mr. Reidl's
23 e-mail, please, first page. Blow that bottom part up.

11:02:08

24 Q. This is your e-mail, sir, to the folks at Profit 21
25 after you've gone live on their software. Second

1 paragraph you write, "Our current status is as follows:
2 We are seven weeks into this implementation and yet we
3 continue to struggle with numerous issues that absolutely
4 should not exist at this point."

11:02:25 5 You were having issues even with Profit 21,
6 weren't you?

7 A. Functionality issues. Not performance.

8 Q. Go to the top of the next page, please. I'm sorry,
9 I meant to go to the bottom of that, of that last page.

11:02:47 10 You also say this.

11 MR. STAR: Go up a little bit, Bob. Bottom
12 of Page 1, please. There you go.

13 Q. "While I will stop short of calling this
14 implementation a failure, I will say that it has not gone
11:03:08 15 well. My patience, and those of my counterparts on our
16 executive team are quickly running out. To put things in
17 perspective, we were sold a system that will streamline
18 our operations and make us more profitable."

19 And you go on, you're saying your sales are
11:03:28 20 down, right?

21 A. Yes.

22 Q. Go to the top of the next page. You just told
23 Profit 21 that your sales are down but here's what you
24 say next. "However," although your sales are down,

11:03:45 25 "We've recently needed to hire three employees to manage

1 the new work load."

2 Sir, you're telling Profit 21 that they
3 were ruining your productivity, weren't you?

4 A. We're telling them we had to add three employees to
11:03:59 5 manage the new work load because there were functionality
6 issues that existed at this time.

7 Q. You're blaming Profit 21 and its software to cause
8 you to hire more people to get even less work done,
9 right, because you had a downturn in sales?

11:04:14 10 A. Yes.

11 Q. And you write, "Not a good indication of
12 efficiencies gained, particularly since our product mix
13 and customer base hasn't changed."

14 Do you see that?

11:04:23 15 A. Yes.

16 Q. You're telling Profit 21 you were doing the same
17 work but less of it than you had been doing on Business
18 One, Radio Beacon, and In-Flight; yet you were less
19 efficient, right?

11:04:39 20 A. Yes, because we were still working through the
21 functional issues that overlap from go-live.

22 Q. You go on two paragraphs later and you write,
23 "Aside from the above, I am most disappointed because we
24 have lost customers through this."

11:04:58 25 Same complaint you made of SAP, right?

1 A. Right.

2 Q. Let's go to Exhibit 325, please. Now, the last
3 thing we worked through was you to Profit 21, May 22nd,
4 2009, seven weeks after you implemented that solution.

11:05:35 5 Identify this document for me, please, sir.

6 A. This is an e-mail from myself to Kathy Crusco,
7 copying Joe Vislocky and another individual, Friday,
8 September 25th, 2009.

9 Q. By September 25th, 2009, you're almost a full six
11:05:56 10 months after going live on Profit 21, right?

11 A. Right.

12 Q. And we'll move through this a little bit quicker.

13 The discussion you're having with
14 Ms. Crusco at Profit 21, she's asking you for payment on
11:06:16 15 the software, right?

16 A. A maintenance payment, yeah.

17 Q. And here's what you write to her, telling her you
18 agree to pay the balance of the 48,000 installment,
19 maintenance payments, but you go on to say, "I agreed to
11:06:29 20 make payments and pay maintenance on a system that does
21 not currently work for us."

22 Six months into this implementation of
23 Profit 21, you're telling them the same thing you told
24 SAP and LSi and IBIS, the system didn't work for you,
11:06:44 25 right?

1 A. We still had some functional issues that were being
2 worked out, yes.

3 Q. And then you go on to say this: "Our business is
4 off 25%."

11:06:52 5 You mean to say you're 25% down in your
6 sales, correct?

7 A. Correct.

8 Q. Yet you go on to say, "But our head count is up
9 since the day we went live on Profit 21."

11:07:05 10 You were doing less sales, but you were
11 employing more people on Profit 21, correct?

12 A. That's my understanding, yeah.

13 Q. Then you go on to write -- well, these are your
14 words, right? You wrote this?

11:07:16 15 A. Right.

16 Q. You go on to write to Ms. Crusco at Profit 21, "Any
17 efficiency we had" -- and you're referring to the
18 efficiencies you had using Business One, Radio Beacon and
19 In-Flight, right?

11:07:27 20 A. Any we had -- any we had had prior, yes.

21 Q. Yeah. And prior, you were on our -- you were on
22 the system that was Business One, Radio Beacon and
23 In-Flight?

24 A. Right.

11:07:37 25 Q. "Any efficiency we had has vanished with the

1 implementation of this software," being Profit 21,
2 correct?

3 A. Correct.

4 Q. Let's switch gears, sir. Let's step back to when
11:08:02 5 you first met Dale Van Leeuwen.

6 We talked about this as well when we were
7 together a couple years ago.

8 You, as I recall, told me you first met
9 Van Leeuwen back in the late 1990s, around 1999, does
11:08:19 10 that sound right?

11 A. That sounds about right.

12 Q. And when you met Van Leeuwen, you knew him to be
13 the owner and the principal of a company called The IBIS
14 Group?

11:08:28 15 A. Yes.

16 Q. And you understood, Mr. Van Leeuwen at that point
17 in time, was representing a product called FACTS and you
18 were working with him on the FACTS software at Hodell,
19 correct?

11:08:39 20 A. Correct.

21 Q. He had, to your understanding, no relationship with
22 SAP at that time?

23 A. That's my understanding, correct.

24 At what time?

11:08:52 25 Q. We're talking back when you first met him, back in

1 the late 1990s?

2 A. Back in 1999, yeah, that's correct.

3 Q. Okay. Just so we've got this clear, FACTS itself
4 is not an SAP product?

11:09:06 5 A. Correct.

6 Q. You've testified a couple times about In-Flight,
7 right? And I just want to make sure we get on the same
8 page here so the jury understands.

9 When you had your old FACTS system,

11:09:21 10 Mr. Van Leeuwen and IBIS were creating some custom
11 functionality to go on top of FACTS as an add-on, and
12 they called that In-Flight?

13 A. They did.

14 Q. Okay. Later on, years later when you eventually
11:09:35 15 look at Business One, the idea is to rebuild the product
16 that had been called In-Flight and keep the same name,
17 but it was going to be rebuild it to work with Business
18 One, correct?

19 A. Correct.

11:09:50 20 Q. So although the name was the same back on the FACTS
21 system, the product was going to be materially different,
22 it was going to be different software code, you
23 understood that?

24 A. Same functionality or similar functionality but
11:10:01 25 different -- it was going to be built on the SAP

1 platform, right.

2 Q. Just so the jury understands, the In-Flight program
3 was going to complete the same kinds of functions but it
4 was going to be completely different software because it
11:10:13 5 needed to be rewritten to work on Business One?

6 A. Right, using the Business One code.

7 Q. I'd like to show you Exhibit 195, please. Sir,
8 this is a letter -- and I'll just tell you right now that
9 is from -- it shows that it's from your father dated
11:10:52 10 January 24th, 2001.

11 Before I ask you any questions, I just want
12 to have an understanding. Is this a letter you would
13 have seen back at that time?

14 A. I believe so. I can't say with certainty.

11:11:05 15 Q. All right. Let's walk through it and if it's not
16 something that you recall seeing, then I'll ask your dad
17 about it later.

18 In his letter, he's writing to Dale
19 Van Leeuwen at the IBIS Group.

11:11:18 20 A. Was this part of an e-mail that I was copied on or
21 something?

22 Q. So far as I understand it was not. It's a separate
23 letter.

24 A. Okay.

11:11:27 25 Q. That's how it was produced.

1 A. Okay. Thank you.

2 Q. But again, if you find you don't remember this,
3 just tell me and I'll ask your dad about it.

4 A. We may have talked about this in my deposition,
11:11:36 5 right?

6 Q. I think we did.

7 A. Okay.

8 Q. Your father writes to Dale Van Leeuwen, "Before we
9 decided to become a beta site."

11:11:44 10 Do you understand what a beta site is?

11 A. Yes.

12 Q. What is that, sir?

13 A. It's being the first on a product. In this case,
14 it's eWMS, which is the rebranding of Radio Beacon.

11:12:02 15 Q. And a beta site customer is going to take on a lot
16 of risk, you'd agree?

17 A. They're going to -- they're going to take on the
18 responsibility of being first on a product.

19 Q. Yeah. And being first on a product like this is
11:12:15 20 always risky, correct?

21 A. I don't know if you would say risky, but
22 it's -- it's going to take some time.

23 Q. Okay.

24 A. And got to work through the kinks.

11:12:27 25 Q. Your father in this letter to Dale Van Leeuwen is

1 complaining about what's been going on with your
2 implementation of software through Mr. Van Leeuwen and
3 IBIS, right?

4 A. Do you mind if I read through the document?

11:12:42 5 Q. Go right ahead. No, take your time.

6 A. Okay. I've read the part that's on the screen.

7 Q. Okay. Go to the next page and then you can read
8 that one, too, before I ask you about it.

9 In the middle paragraph, you agree your
11:13:45 10 father is complaining to Van Leeuwen that very little
11 preparatory work was done on the project that you had
12 going with him?

13 A. Yes. It says the implementation was taken with
14 very little preparatory work.

11:13:58 15 Q. And he's referring here to Radio Beacon, right?
16 It's the Radio Beacon add-on which at that time you were
17 using with your FACTS software, correct?

18 A. Correct.

19 Q. Correct, sir?

11:14:06 20 A. Correct.

21 Q. Bottom paragraph on that first page, your father
22 writes to Van Leeuwen, "We have invested close to
23 \$300,000, plus at least \$60,000 in implementation costs
24 to get where we were with CrossDock."

11:14:22 25 CrossDock was one of the software programs

1 that Van Leeuwen and IBIS had sold you, right?

2 A. I'm not sure if they did or not. I think by the
3 time I came on to the company, it had already been
4 purchased and I can't tell you with certainty that it was
11:14:37 5 purchased with --

6 Q. Your father goes on to write, "Unfortunately, we
7 are incurring at least a thousand dollars a day higher
8 costs to maintain the status quo while picking packaged
9 orders manually and writing out packing slips, in essence
11:14:55 10 doubling our workload."

11 You understood what your father was saying
12 to Mr. Van Leeuwen is that this prior software was
13 ruining your productivity, right?

14 A. Yes. There were higher costs.

11:15:11 15 Q. And those higher costs, according to your dad, were
16 more labor costs because you were having to take more
17 time to do the same work?

18 A. Right. That's my understanding.

19 Q. Let's go to the second page, please. Take a moment
11:15:34 20 if you need to read that and refresh yourself with it.

21 A. Okay.

22 Q. The first paragraph your father writes, "If the
23 product could not provide the capabilities required, all
24 of the parties selling Radio Beacon as a FACTS-integrated
11:16:23 25 warehouse management system had an obligation to say so.

1 They did not!"

2 Now, let's just break this down. SAP
3 wasn't involved back then, right?

4 A. Right.

11:16:34 5 Q. This didn't involve any SAP software at all, did
6 it?

7 A. This did not involve SAP.

8 Q. What you understood that your father was saying
9 here was that the software that you were on at that time,
11:16:46 10 its capabilities, he believed, had been misrepresented to
11 you, right?

12 A. Right.

13 Q. And when he writes, "All of the parties selling
14 Radio Beacon as a FACTS-integrated warehouse management
11:17:00 15 system," those parties included Dale Van Leeuwen and
16 IBIS, right?

17 A. Yes, he was one of the parties.

18 Q. Thank you.

19 Look at the fourth paragraph on the second
11:17:12 20 page of this letter from your father. He writes, "I am
21 not going to belabor the point of the drop in customer
22 service and lost business in this letter. That issue is
23 reserved in the event I need to seek legal advice."

24 Sir, you understood your father to be
11:17:30 25 telling Mr. Van Leeuwen and IBIS back in 2001 that his

1 old software system was causing a drop in Hodell's
2 customer service and a loss of business to Hodell, right?

3 A. Right.

4 Q. Same kinds of things you're complaining about with
11:17:44 5 SAP and In-Flight and Radio Beacon now?

6 A. Yes.

7 Q. Look at the bottom of the last paragraph, last
8 sentence. He writes, "We cannot possibly have a glimmer
9 of hope for a payback on our investment if there is not a
11:18:04 10 quick resolution to these implementation problems."

11 Do you see that?

12 A. Yes.

13 Q. And that also was the same kind of claim that
14 you're now making against SAP and Business One and
11:18:15 15 In-Flight and Radio Beacon, that you're not going to get
16 a payback on your investment, right?

17 A. That's part of the claim, yes.

18 Q. Let's move on. Let's go to Exhibit 311, please.

19 MR. STAR: Can you blow that up so we can
11:18:46 20 see it, please, Bob?

21 Q. We're going to review this whole chain, sir, but
22 I'm just wondering if you can identify the document for
23 us, first.

24 A. This is an e-mail from Dale Van Leeuwen to myself
11:19:00 25 on Friday, July 11th, 2003.

1 Q. All right.

2 MR. STAR: Bob, let's go to the bottom half
3 of that first page.

4 Q. Sir, you write to Mr. Van Leeuwen on July 11th of
11:19:31 5 2003, and this is before you've ever had any discussion
6 about SAP or Business One, right?

7 A. I believe so, yes.

8 Q. And this e-mail has nothing at all to do with SAP
9 or Business One, right?

11:19:45 10 A. Right.

11 Q. And let's look what you write to Mr. Van Leeuwen.
12 You're talking about at that point in time the software
13 that he had been selling to you and had been working with
14 you -- with on -- with you on for several years at that
11:19:57 15 point, correct?

16 A. Correct.

17 Q. You write, "Dale, I'm writing this message to you
18 in an effort to clearly communicate my concerns with you
19 regarding eWMS," that was Radio Beacon?

11:20:11 20 A. Right.

21 Q. "And The IBIS Group in general."

22 You had concerns with The IBIS Group,
23 didn't you?

24 A. Yes. As I testified yesterday, we had concerns
11:20:23 25 that they had adequate resources, and in his e-mail he

1 notes that, that he has resource allocation issues.

2 Q. And you go on to write, "I find it disheartening to
3 be in this position with your organization."

4 That's the way you felt back then, right?

11:20:39 5 A. Yes.

6 Q. Second paragraph, last sentence you write,
7 "However, based on the level of attention we received
8 from your organization, how are we to rely on you in the
9 future when we need to keep a larger, more complex
10 software package running smoothly?"

11 Those were your feelings back in July of
12 2003, right?

13 A. Right.

14 Q. You were questioning how you could even rely on
11:21:04 15 Mr. Van Leeuwen and IBIS back in 2003?

16 A. Yes, because of the level of attention from his
17 organization, the resources required to handle our load.

18 Q. And this is before you're even discussing Business
19 One?

11:21:20 20 A. Correct.

21 Q. And you go on here, you write this: "In May,"
22 you're talking about May of 2003, right?

23 A. Yes.

24 Q. "In May of 2003 I went to bat for you before my
11:21:34 25 father. He was ready to take legal action."

1 Your father was going to sue Van Leeuwen
2 and IBIS in 2003, wasn't he?

3 A. I believe he threatened it. I don't think he was
4 ready to.

11:21:47 5 Q. You had to convince your dad that the project would
6 be completed by June 3rd. What you're telling
7 Van Leeuwen is you went to bat for him so your dad
8 wouldn't actually sue him back in 2003, right?

9 A. That's my understanding, yes.

11:22:03 10 Q. And part of what you told your father was, with
11 Dale's help, that the project would actually be completed
12 by June 30th, but that didn't happen, did it?

13 A. No, it doesn't look like it did.

14 Q. Right. Because you're saying to him, the project's
11:22:18 15 not complete. That was six-plus weeks ago.

16 A. Right.

17 Q. And in the last paragraph on that first page, you
18 write, "We paid for a working system and it is not yet
19 fully functional."

11:22:34 20 Then you write, "Due diligence was never
21 conducted at the start of the project."

22 Those are your feelings about
23 Mr. Van Leeuwen and IBIS as of July, 2003, right?

24 A. And Aperum, the parent company that was involved as
11:22:51 25 well.

1 Q. And Aperum was the Radio Beacon company, right?

2 A. No, it wasn't. Radio Beacon had their product
3 called Radio Beacon. They were selling it through
4 Aperum, and rebranding it called eWMS.

11:23:04 5 Q. Okay. So as of July, 2003, you had concerns with
6 Dale Van Leeuwen, right? You felt he didn't do due
7 diligence.

8 A. Right.

9 Q. Your father had been ready to sue him back then and
11:23:17 10 you went to bat for Van Leeuwen to convince your dad not
11 to do that, correct?

12 A. Right.

13 Q. You were also dissatisfied with Radio Beacon, eWMS,
14 right?

11:23:28 15 A. Yes. Specifically the integration.

16 Q. And felt that they hadn't done the proper due
17 diligence on integrating Radio Beacon with your old FACTS
18 system, right?

19 A. Right.

11:23:43 20 Q. Same Radio Beacon product you later tried to lay on
21 top of Business One, plus In-Flight?

22 A. Right. I don't know if you'd call it lay on top,
23 but it was part of the three-prong solution that we've
24 been talking about, yes.

11:23:58 25 Q. Now, these e-mails and letters, they were never

1 sent to SAP, were they?

2 A. No.

3 Q. You were dealing with IBIS and Van Leeuwen at the
4 time, right?

11:24:10 5 A. Right.

6 Q. You never even had spoken with SAP?

7 A. I had never spoken with SAP?

8 Q. Back at this time.

9 A. Correct.

11:24:19 10 Q. You didn't actually speak with anybody at SAP until
11 after you went live in March of 2007?

12 A. Right.

13 Q. Let's look at Exhibit 312, please.

14 You're copied on this. Can you identify
11:24:48 15 the document for us, please?

16 A. It's an e-mail from my father to Dale Van Leeuwen
17 copying me on Thursday, July 24th, 2003.

18 Q. Let's look what your father writes to Van Leeuwen
19 and copied you on back in July of 2003.

11:25:11 20 He says, "Our labor cost is up 1.5 cents
21 for every sales dollar in Cleveland."

22 Do you see that?

23 A. Yes.

24 Q. You agree with me he's telling Van Leeuwen and IBIS
11:25:23 25 back in 2003 that you're less efficient because of IBIS's

1 and Van Leeuwen's software, right?

2 A. Yes.

3 Q. He's telling them basically for every dollar you
4 guys generate in sales, you're losing one and a half
11:25:47 5 percent?

6 A. No, he's saying there's additional cost of one and
7 a half cents. Doesn't necessarily mean --

8 Q. So to your bottom line, it's a
9 one-and-a-half-percent reduction in the amount of money
11:26:04 10 you're actually bringing in, the net amount of money
11 you're bringing in?

12 A. For our Cleveland operation which was one of all of
13 our warehouses. It had only been installed in Cleveland.

14 Q. And you understand your father to be saying, and to
11:26:16 15 be blaming this only on the software back in 2003, right?
16 That's what he's saying?

17 A. Yes.

18 Q. The software is causing you to be less efficient
19 back in 2003?

11:26:32 20 A. Yes. That's my understanding.

21 Q. And it had nothing to do with Business One or SAP,
22 right?

23 A. Right.

24 Q. Go to the second paragraph. Your father writes,
11:26:45 25 "I'm personally convinced that eWMS, Radio Beacon, was

1 promoted well beyond its capabilities and Hodell-Natco
2 has paid a very dear and costly price for believing in
3 this product and the support promised by Radio Beacon and
4 Aperum's precursor."

11:27:05 5 Do you see that?

6 A. Yes.

7 Q. You agreed with your dad, right?

8 A. Right.

9 Q. He goes on to write, "Who knows how far behind our
11:27:20 10 competition may have fallen because we are in irons, an
11 old sailor term, with a five-year-old version of FACTS.
12 I cannot begin to measure the cost of this lack of
13 progress and I'm worried that we do not have a realistic
14 fall-back-upon option."

11:27:37 15 You and your dad both felt as of July of
16 2003 that you were stuck in an old version of FACTS that
17 Van Leeuwen and IBIS had failed to update and could not
18 properly support, correct?

19 A. Correct.

11:27:51 20 Q. That's the reason you started looking for new
21 software, because you were dissatisfied with the old
22 software Van Leeuwen had given you over the course of
23 some years?

24 A. That was only one of the reasons.

11:28:06 25 As I testified yesterday, we were looking

1 for a product that was more scaleable, customizable,
2 could grow with us.

3 Q. Because you couldn't get any of that with the
4 solution Van Leeuwen had given you?

11:28:18 5 A. With -- right, with the -- with the FACTS and
6 In-Flight, Radio Beacon solution, we needed to grow.

7 Q. And at no time in your search for new software and
8 your conversations about the Business One product did you
9 ever inform SAP itself of anything that had been going on
11:28:54 10 back in 2003 between Hodel and IBIS and Van Leeuwen,
11 right?

12 You never told SAP you had been considering
13 suing Van Leeuwen and IBIS, did you?

14 A. No. We were working through IBIS and LSi.

11:29:09 15 Q. Okay. And you never told SAP anything about what
16 had been happening?

17 A. I never had direct contact with SAP because it was
18 crystal clear that they marketed and sold their product
19 through their certified business partners.

11:29:24 20 Q. And you, as I understand it, believe that that
21 certified business partner was Van Leeuwen and his
22 companies IBIS/LSi, right?

23 A. LSi.

24 Q. Um-hmm. But you told us IBIS/LSi, they became one
11:29:38 25 and the same, that was your testimony yesterday?

1 A. LSi purchased IBIS.

2 Q. Um-hmm.

3 A. I believe that was in May of 2004.

4 Q. Yeah, at that point you considered them one and the
11:29:48 5 same?

6 A. Correct.

7 Q. And when you first started having conversations
8 with anybody about Business One outside of your father
9 and people within Hodell, the person you were talking to
11:29:59 10 was Dale Van Leeuwen?

11 A. Right.

12 Q. Dale Van Leeuwen you knew for years?

13 A. Right.

14 Q. And when you knew him for all those years, he had
11:30:12 15 no relationship with Business One or SAP at all?

16 A. I don't believe so. You can ask him that.

17 Q. He never told you he did over all those years,
18 right?

19 A. No, he -- he indicated that he had been forming a
11:30:27 20 relationship with them.

21 Q. It was late in your relationship with him, wasn't
22 it? It was late in 2003, right?

23 A. It would have been in the second half of 2003,
24 right.

11:30:36 25 Q. So when you first knew Mr. Van Leeuwen and knew him

1 for all those years, you knew him to be running his own
2 completely separate and independent company that had
3 nothing to do with SAP, right?

4 A. Correct.

11:31:12 5 Q. There's been mention in this case of conversations
6 between people at Hodell and folks at American Express.

7 As I understood our discussions on that
8 topic before, you personally weren't involved in speaking
9 with anybody at American Express, right?

11:31:39 10 A. That's correct.

11 Q. That was mainly your father on behalf of Hodell?

12 A. Right.

13 Q. You really only became involved with Business One
14 discussions sometime in, I think you said yesterday, late
11:31:53 15 2003 or early 2004?

16 A. Right.

17 Q. And at that point in time you're dealing with
18 Van Leeuwen and IBIS, right?

19 A. Yes.

11:32:03 20 Q. And Van Leeuwen and IBIS, they're the ones you
21 actually have a relationship with; they're the guys that
22 you trust, yeah?

23 A. Van Leeuwen and IBIS?

24 Q. Yeah.

11:32:13 25 A. Yeah. He was the one that we were working with,

1 and as he represented the solution, it would be a
2 solution, that three-part solution that we were talking
3 about, bringing SAP into the mix.

4 Q. Okay. Let's talk about Dan Lowery.

11:32:35 5 He wasn't involved in your early
6 discussions about Business One back in late '03 or early
7 2004, right?

8 A. No, I don't believe so.

9 Q. You only met Mr. Lowery after LSi and IBIS merged,
11:32:52 10 correct?

11 A. Correct.

12 Q. That merger happened in May of 2004?

13 A. April or May of 2004, yeah.

14 Q. And the first time Mr. Lowery and you ever met
11:33:03 15 face-to-face in person was in September of 2004, correct?

16 A. I'm not certain about that.

17 He came out with Dale, I thought it was
18 shortly after the acquisition, but I'm not certain.

19 Q. Let's just try to refresh your recollection real
11:33:21 20 quick on that so we can -- we can nail this down.

21 Let's go to Exhibit 830, please.

22 Sir, you recall this is an e-mail from
23 Mr. Lowery to your father and yourself on September 12th,
24 2004?

11:33:49 25 A. Yes.

1 Q. And the subject line is "Thank You." And what
2 Mr. Lowery writes to you there is "Thank you for your
3 time and opportunity to discuss your business. I enjoyed
4 meeting you both and the tour of your operation."

11:34:05 5 Does that refresh your recollection as
6 September, 2004 being the first time you actually met
7 face-to-face with Dan Lowery?

8 A. Yes.

9 Q. Okay. And so up until that point in time,
11:34:17 10 September of 2004, the only person outside of people
11 internal at Hodell that you'd had any face-to-face
12 discussions with concerning Business One, the only person
13 was Mr. Van Leeuwen, right?

14 A. I believe so, yes.

11:34:32 15 Q. But by September of 2004, you were pretty far along
16 with your plan to go forward with Van Leeuwen and IBIS
17 and develop a three-part custom solution, correct?

18 A. Yes. We had had some discussions, but nothing had
19 been formalized yet.

11:34:53 20 Q. Right. Because by December of 2004, we've
21 established this yesterday, you actually signed a
22 development agreement with IBIS/LSi?

23 A. Yes.

24 Q. And the development agreement is for the
11:35:05 25 development of In-Flight and integration of In-Flight and

1 Radio Beacon on top of Business One?

2 A. It's for the purchase of 80 Business One user
3 licenses and the development of those additional
4 components, yes.

11:35:18 5 Q. All right. Let's take a look quickly at Exhibit 9,
6 please.

7 This is a letter you were shown yesterday.
8 It's dated October 14th, 2004 and it's signed by Dale
9 Van Leeuwen at the bottom as COO, The IBIS Group and Dan
11:35:45 10 Lowery, president, The IBIS Group.

11 Do you remember this letter?

12 A. I believe so.

13 Q. Okay.

14 A. I may have to read it again but --

11:35:51 15 Q. Sure. You can take your time.

16 Let me just establish the background here.

17 You had just met Lowery for the first time
18 face-to-face in September.

19 A. Okay.

11:36:00 20 Q. Of '04, right?

21 A. Right.

22 Q. So this is just a month or so after you first met
23 Dan Lowery face-to-face?

24 A. Yeah, we looked at this yesterday as well.

11:36:09 25 Q. Okay. It's defining the project that you're going

1 to undertake with IBIS and LSi, correct?

2 A. Correct.

3 Q. And in the second paragraph, they're talking about
4 this project taking over 5,000 man hours of work.

11:36:29 5 Do you see that?

6 A. Correct.

7 Q. And yesterday you told us that you thought that
8 this development project of In-Flight and integrating it
9 on top of Business One with Radio Beacon would take 18
11:36:39 10 months.

11 That was your understanding through this
12 letter, correct?

13 A. Correct.

14 Q. And you understood this was going to be a big
11:36:46 15 project, an 18-month project is a big project, right?

16 A. Correct.

17 Q. And in the last paragraph there, it talks about
18 what you just said, it was going to be an 80-user
19 Business One system at a price of \$3,750 per user, right?

11:37:03 20 A. Right.

21 Q. It didn't talk about three hundred users on a
22 Business One system, did it?

23 A. This letter did not. Our conversations did.

24 Q. This letter doesn't say, "Hey, Kevin or Otto, we
11:37:22 25 understand you're on a growth path and that you want to

1 go from 80 to 300 pretty quickly."

2 It doesn't say anything like that?

3 A. No. Our conversations covered that.

4 Q. Okay. You keep coming back to conversations
11:37:34 5 because you'll admit you don't have a single piece of
6 paper, whether it's a note, an e-mail, a memo, anything
7 where you ever memorialized that anybody ever told you
8 you could have a 300-user system on Business One, right?

9 MR. CARNEY: Objection, Your Honor. That's
11:37:56 10 out of character.

11 THE COURT: Overruled.

12 A. We had documents from SAP, copyrighted by SAP, that
13 indicated that it was scaleable to 3 to 500 users.

14 Q. You're referring to the marketing literature.
11:38:10 15 We're going to go there. You don't have a single note, a
16 memo, anything that you exchanged with anybody that told
17 you or memorialized for you that Hodell had been promised
18 it could have a 300-user system; you don't have any such
19 thing do you?

11:38:26 20 A. I don't. I believe my father has notes.

21 Q. We'll go through your father's notes when he
22 testifies, we'll see what they say.

23 You can't point us to a single document
24 that contains such a promise, can you?

11:38:38 25 A. I don't have that document.

1 Q. Thank you.

2 Yet, let's be clear for the jury. What
3 you're saying in this case is that this promise, this
4 so-called promise about 300 users was vitally important
11:38:55 5 to you, right? You wouldn't have moved forward, you
6 think, without that promise?

7 A. It was important to us, yes.

8 Q. Yet you never wrote it down, did you?

9 A. We had communicated it many times. We had
11:39:06 10 discussed it many times in face-to-face meetings.

11 Q. You never wrote it down?

12 A. I believe it's in notes, but I never wrote it down,
13 no. I made sure that we communicated it to Dale
14 Van Leeuwen and Dan Lowery.

11:39:18 15 Q. Let's go to Exhibit 11, please.

16 MR. STAR: Bob, blow that up so we can see
17 all the text, please.

18 Q. So you recall receiving this as part of your
19 communications with IBIS and LSi back in around October
11:39:49 20 of 2004?

21 A. Yes. We identified this yesterday with the
22 Business One logo.

23 Q. And it talks about you're going to purchase
24 Business One licenses, you see that at the top?

11:40:03 25 A. Yes.

1 Q. And then in the middle there it breaks down the
2 costs, do you see that?

3 A. Yes.

4 Q. 80 users of Business One at 3750 a user for
11:40:14 5 \$300,000, right?

6 A. Right.

7 Q. And then it says "The purchase of In-Flight
8 Enterprise," and it says that's going to be a 3800-hour
9 development project, do you see that?

11:40:23 10 A. Yes.

11 Q. But you're getting that at no charge, right?

12 A. Right.

13 Q. And you'd agree with me if you do the math and you
14 take IBIS/LSi's normal hourly rate that we see there of
11:40:34 15 150 bucks an hour and you multiply that by 3800 hours,
16 it's over 570,000 of free software development you're
17 going to get, right?

18 A. Right.

19 Q. And the reason you were going to get that free
11:40:47 20 software development is because that was the restitution
21 you were getting from IBIS due to the prior software
22 failures that you had on the old FACTS system, right?

23 A. In part.

24 It was also because we were going to be the
11:41:01 25 first working with them on this system.

1 Q. So you're going to be the beta site for this brand
2 new, untested, unknown system, right?

3 A. We were going to be the first user in our industry
4 on it.

11:41:12 5 Q. The first user in any industry?

6 A. Yes. And specifically we were talking about the
7 fastener industry.

8 Q. Yeah, but so the jury understands, the software
9 hadn't been used by any company, whether they are in
11:41:22 10 fasteners or whatever else, right?

11 A. My understanding is that Business One had. Radio
12 Beacon had.

13 Q. Business One, but Radio -- let's just be clear.
14 The combination that you were going to run, Business
11:41:32 15 One --

16 A. Yes.

17 Q. -- plus Radio Beacon and In-Flight wasn't used
18 anywhere by any company in any industry?

19 A. Correct.

11:41:37 20 Q. And you had concerns because you were going to be
21 the first company ever using this, right?

22 A. Right.

23 Q. It was risky?

24 A. Well, as I mentioned before, you can say risky, but
11:41:54 25 I would say it requires more effort and more testing and

1 more problem-solving and work to get it there.

2 Q. Let's go to Exhibit 8. Recognize these as your
3 dad's handwritten notes?

4 A. Yes.

11:42:18 5 Q. Okay. He indicates that this was a conference --

6 MR. CARNEY: Objection, Your Honor.

7 THE COURT: Overruled.

8 Q. He indicates here it was a conference call on
9 October 14th of 2004 and he lists you as having been one
11:42:32 10 of the participants on that call.

11 Do you remember being part of that?

12 A. Yes.

13 Q. And what your father writes here is Hodell
14 concerns, do you see that?

11:42:44 15 A. Yes.

16 Q. This is a couple months before you actually sign
17 your development agreement with IBIS/LSi, right?

18 A. Right.

19 Q. Look at this first concern. IBIS/LSi already
11:42:58 20 missed the first estimate for the start of the
21 implementation, correct?

22 A. Correct. That's my understanding.

23 Q. You didn't pick up the phone or send an e-mail to
24 anybody at SAP and say, "Hey, SAP, we're concerned.

11:43:10 25 IBIS/LSi has missed the start of your -- of the

1 implementation."

2 You never said that, right?

3 A. No. We were working through their business
4 partner.

11:43:19 5 Q. The next thing he writes as a concern is it's a
6 custom development of major components.

7 Do you see that?

8 A. Yes.

9 Q. You understood, you understood the project to be
11:43:28 10 exactly that, a major custom development project; it was
11 going to take 18 months to complete?

12 A. Right.

13 Q. Let's keep going. Yesterday Mr. Carney was
14 questioning you and he asked you, "Kevin, you think that
11:43:52 15 you were in business together with IBIS/LSi," and you
16 said you didn't think you were.

17 And you said something to the effect that,
18 hey, you guys are in the chain and fastener business;
19 you're not software developers.

11:44:04 20 Right? That's your view?

21 A. Right.

22 Q. But you actually, you and your father both
23 recognized that you were actually going to play the role
24 of a developer working with IBIS/LSi, correct?

11:44:15 25 A. We were going to be the first to use it.

1 We don't do software development. They do
2 that.

3 Q. Let's look at Exhibit 740.

4 A. They and SAP do that.

11:44:44 5 Q. Sir, you recognize Exhibit 740 as an e-mail from
6 your father, copying you, back on November 11th of 2004,
7 a month before your development agreement is signed with
8 IBIS/LSi?

9 A. Yes.

11:44:58 10 Q. And the subject is "Revisions to the draft
11 In-Flight development agreement," right?

12 A. Right.

13 Q. I notice no one from SAP is copied on this,
14 correct?

11:45:07 15 A. Right. Again, we were working through their
16 business partner.

17 Q. Thank you.

18 MR. STAR: Bob, focus in on the language
19 there, if you don't mind.

11:45:21 20 Q. Here's what your father writes and copies you.
21 "The attached document is a revision to the draft you
22 sent us."

23 Look at this sentence for me. "Although we
24 are unhappy about playing a developer (pioneer-the guys
11:45:37 25 with the arrows in their back) role, the attached

1 agreement reflects what we are willing to proceed with."

2 Mr. Reidl, you agree with your father,
3 Hodel was going to play a developer role in this custom
4 project with IBIS/LSi, right?

11:45:53 5 A. Right. Indeed, he defines that by saying pioneer.
6 The guys that are going to be the first to use the
7 product; not -- but I want to be clear, we weren't
8 developing any software in-house.

9 LSi was doing that.

11:46:06 10 Q. I understand you weren't writing software code. No
11 one debates that.

12 A. Okay.

13 Q. But you do agree you were part of this joint
14 development project, you were providing the funding and
11:46:16 15 you were taking the risk as the pioneer, the guys with
16 the arrows in your back, right?

17 A. Because we were going to be the first with this
18 software, yes.

19 Q. And what you were doing in this joint venture is
11:46:28 20 you were providing the funding for IBIS/LSi to then go
21 out and build its custom application, correct?

22 A. We were providing some of the funding is my
23 understanding. I don't know about all of the funding
24 but, yes, we were going to be paying them for the initial
11:46:51 25 purchase of Business One licenses and helping them with

1 the upfront funding.

2 Q. And in addition, Hodell also considered itself in
3 its own words to be a development partner with IBIS/LSi
4 on this custom software development project, correct?

11:47:13 5 A. Is there a piece of paper we should look at or
6 exhibit?

7 Q. Yes, sir. Exhibit 755, please.

8 MR. STAR: Bob, just come out of that for a
9 moment. I want to see the Bates label at the bottom.

11:47:40 10 Q. Sir, you see at the bottom it has the
11 numbers -- letters H-O-D-L followed by some numbers, 107?

12 A. Right.

13 Q. You recognize that means this is a document that
14 was produced in this case out of Hodell's business
11:47:53 15 records, right?

16 A. Right.

17 Q. So this is a Hodell document?

18 A. Right.

19 Q. And in this document, someone on behalf of Hodell
11:48:02 20 acknowledges, "If they want us to be a development
21 partner, we should see rewards from the success of the
22 product; i.e., commissions on future sales."

23 Do you see that?

24 A. Right.

11:48:16 25 Q. You don't dispute what this document says, Hodell

1 was going to be a development partner with IBIS/LSi,
2 right?

3 A. We were -- we were going to work with them in
4 collaboration. This says development partner. Yes. And
11:48:31 5 we would earn a commission on future sales.

6 And I think, like I mentioned, that was the
7 first 100 users on the system.

8 Q. Thank you, sir.

9 MR. STAR: Your Honor, I'm not sure what
11:48:41 10 you want to do.

11 I see we're coming up toward noon. I have
12 awhile to go. I can start on another topic or --

13 THE COURT: Yes, we'll go until 12:00,
14 12:15 if that's all right.

11:48:52 15 MR. STAR: That sounds fine.

16 THE COURT: We will wait until it's
17 completely sunny outside so you can go out.

18 BY MR. STAR:

19 Q. All right. So we all know you eventually sign a
11:49:05 20 contract with IBIS/LSi and this is a development
21 agreement, you sign it in December of 2004?

22 A. Right.

23 Q. All right. Let's get you a copy of that. I think
24 it probably would be easier to give you also a hard copy
11:49:15 25 if you'd like to have it. It's Exhibit 291. Spend some

1 time with it.

2 A. I've seen it before.

3 MR. STAR: Can you give him a copy?

4 Q. Sir, the parties to this agreement are Hodell-Natco
11:50:07 5 Industries, The IBIS Group that you have listed here as a
6 wholly-owned company of LSi-Lowery Systems, and
7 LSi-Lowery Systems, Inc., itself, right?

8 A. Right.

9 Q. And if we flip to the signature block on the bottom
11:50:23 10 of the second page, you agree it's signed by the actual
11 parties, Hodell on the one hand, your father signs,
12 right?

13 A. Right.

14 Q. And Dan Lowery signs on behalf of both LSi and
11:50:38 15 IBIS, correct?

16 A. Correct.

17 Q. All right. Let's walk through some of the details
18 of this.

19 First off, the project description on the
11:50:46 20 first page --

21 MR. STAR: If you can blow that up, Bob.

22 Q. The project's described as the development of the
23 IBIS Group's In-Flight Enterprise application and its
24 integration into SAP Business One software for
11:51:10 25 Hodell-Natco Industries, Inc., right?

1 A. Right.

2 Q. That's what you understood this project to be?

3 A. Right.

4 Q. And under general terms, it breaks out how
11:51:18 5 the -- it breaks out the finances of this, of this
6 engagement, right?

7 A. Right.

8 Q. It says Hodell's going to advance LSi \$180,000 of
9 the 300,000 purchase price in three stages -- pardon
11:51:34 10 me -- in three \$60,000 stages as downpayment for, A, the
11 purchase of 80 user licenses of Business One.

12 Do you see that?

13 A. Yes.

14 Q. B, the purchase of unlimited user licenses of IBIS
11:51:50 15 In-Flight Enterprise software for Hodell-Natco use. Do
16 you see that?

17 A. Yes.

18 Q. And, C, the purchase of the programs to integrate
19 the In-Flight Enterprise application to SAP's Business
11:52:03 20 One software. Right?

21 A. Right.

22 Q. So your total price was going to be \$300,000, yes?

23 A. Right.

24 Q. And \$300,000 was not all going toward Business One
11:52:17 25 software, was it?

1 A. No. It was going towards three different
2 components.

3 Q. And in the italicized paragraph under general
4 terms, if you can blow that up, Bob, it talks about how
11:52:37 5 you're going to fund this, right? You're going to make a
6 first \$60,000 installment payment at the signing of the
7 contract, yes?

8 A. Yes.

9 Q. Another \$60,000 at 150 days after signing?

11:52:51 10 A. Yes.

11 Q. And the final 60,000 of the downpayment at 300 days
12 after signing, right?

13 A. Right.

14 Q. So let's just break this down and see if we
11:53:02 15 understand.

16 The total price was going to be 300,000?

17 A. Yes.

18 Q. You were going to pay that in five installments of
19 60,000?

11:53:15 20 A. Yes.

21 Q. The first three installments were to be spread out
22 over the first 300 days after you signed the development
23 agreement, right?

24 A. Yes.

11:53:29 25 Q. 60,000 at signing, 60,000 150 days later, and the

1 next 60,000 for a total of 180,000, 300 days after you
2 sign the contract, right?

3 A. Right.

4 Q. And the remainder would be 120,000, correct?

11:53:46 5 A. Correct.

6 Q. And you weren't going to pay that remaining balance
7 until software was actually purchased from SAP, right?

8 A. Yes. It says when ordered -- when IBIS orders the
9 software from SAP.

11:54:01 10 Q. And you understood IBIS was not going to order
11 software from SAP until at least 300 days after you
12 signed the development agreement, right?

13 A. Can you say that again?

14 Q. Sure.

11:54:16 15 A. Can I have a minute?

16 Q. Please.

17 A. I want to read through the rest of that paragraph.

18 Q. Take your time.

19 A. Thank you.

11:54:22 20 (Pause). Okay.

21 Q. So now that you've refreshed yourself with the
22 document, just to go back, you're going to make a total
23 of \$180,000 worth of payments in three installments and
24 that was going to be paid by 300 days after you signed
11:55:05 25 the contract, right?

1 A. Right.

2 Q. You then have a remaining balance of 120,000 that
3 you were going to pay over two additional \$60,000
4 installment payments, right?

11:55:14 5 A. Right.

6 Q. And you understood that that balance of \$120,000
7 was not going to be paid until after IBIS/LSi actually
8 ordered software from SAP, correct?

9 A. Right.

11:55:31 10 Q. And that order of software from SAP, you
11 understood, was not going to happen until at least 300
12 days after you signed this development agreement, right?

13 A. That's what I understood.

14 Q. And, in fact, in Paragraph 3, it broke that out a
11:55:52 15 little bit, right? It's talking in Paragraph 2 about
16 what IBIS is going to do with the \$180,000 downpayment,
17 that's the first three installments over the first 300
18 days, right?

19 A. Right.

11:56:05 20 Q. And then it talks about what's going to happen with
21 the remaining balance of 120,000, correct?

22 A. Correct.

23 Q. And it says Hodell will pay 60,000 of the purchase
24 price balance of 120,000 when IBIS orders the software
11:56:21 25 from SAP, right?

1 A. Yeah, I believe I just confirmed that.

2 Q. Yep. And you even go further, this should occur on
3 a date mutually agreed upon and listed in the In-Flight
4 Enterprise development project plan, do you see that?

11:56:34 5 A. Yes.

6 Q. And then it breaks out what the money is going to
7 go to.

8 This \$60,000 payment will be for 40
9 licenses of Business One, right?

11:56:45 10 A. Right.

11 Q. The remaining \$60,000 purchase price balance for
12 the 41st through 80th license will be due on successful
13 implementation, do you see that?

14 A. Yes.

11:57:01 15 Q. Okay. Now, when Mr. Lambert gave his opening and
16 then throughout your testimony when Mr. Carney questioned
17 you, I understood Hodell's position to be that you
18 believe that at the time you signed this development
19 agreement in December, 2004, you had actually purchased
11:57:41 20 from SAP 80 Business One user licenses.

21 Is that actually your position, sir?

22 A. My position is that when we signed this agreement,
23 we obligated ourselves and we were purchasing 80 Business
24 One user licenses from their channel partner through LSi,
11:58:00 25 from LSi.

1 Q. Let's break it down. I just -- this is something
2 we've been at for years on this issue.

3 A. Right.

4 Q. You would agree with me right now that Hodell did
11:58:09 5 not actually purchase software from SAP until at least
6 300 days after you signed the development agreement,
7 right?

8 A. We purchased the software from LSi. That's where
9 we purchased the software. We did not purchase the
11:58:26 10 software from SAP. We purchased it from their channel
11 partner.

12 Q. Is it your position and you're telling this jury
13 that when you signed this development agreement in
14 December of 2004, you actually purchased software from
11:58:39 15 SAP?

16 A. We purchased and obligated ourselves to purchase 80
17 user licenses from their channel partner. It was sold
18 and marketed through their channel partner.

19 Q. Sir --

11:58:51 20 A. LSi was their channel partner.

21 Q. We've gone through this before when you and I
22 talked.

23 You agree you eventually sign a license
24 agreement with SAP directly, right?

11:59:02 25 A. No. LSi presented that license agreement to us.

1 Q. You signed a contract with SAP. The other party to
2 that license agreement is SAP, correct?

3 A. Correct.

4 Q. And you signed that, you personally signed it, on
11:59:14 5 December 23rd of 2005, a year after this development
6 agreement?

7 A. Yes. Right after we had purchased 40 additional
8 licenses.

9 Q. You keep coming back to that. We'll break that
11:59:24 10 down for the jury, too.

11 Let's be clear, though. You've told me
12 this before. The first time Hodell ever received
13 Business One software from SAP, it didn't happen until
14 after December, 2005, after you signed the license
11:59:39 15 agreement, correct?

16 A. Correct. LSi installed it on our servers much
17 later.

18 THE COURT: You look like you want a break.

19 MR. STAR: We can take a break now.

11:59:51 20 THE COURT: All right, folks, lunch time.
21 How does that sound?

22 It's close to 12:00 o'clock. 1:15, where
23 do we meet, Mr. Panigutti?

24 A JUROR: L-1.

12:00:02 25 THE COURT: All right. You guys have been

1 good. Sometimes we have jurors wandering around up here.

2 Keep in mind the admonition. We'll see you

3 at 1:15.

4 (Jury out)

12:00:15 5 (Luncheon recess taken).

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1 TUESDAY, JUNE 16, 2015, 1:22 P.M.

2 THE COURT: Be seated, folks.

3 CROSS-EXAMINATION OF KEVIN REIDL (RESUMED)

4 BY MR. STAR:

13:23:34 5 Q. All right. Mr. Reidl, let's go through a few more
6 subjects and get you down from there.

7 Let's stay with your development agreement.
8 You have a copy there, that's Exhibit 291.

9 MR. STAR: Bob, can you bring that back up?

13:23:45 10 Q. Sir, you'll agree with me there's nowhere in this
11 contract between Hodell and IBIS/LSi that mentions Hodell
12 is going to grow to needing 300 users of Business One,
13 right?

14 A. Right.

13:24:00 15 Q. Doesn't say anything about Hodell being on any
16 particular growth path, correct?

17 A. Correct.

18 Q. And it doesn't provide you a price for 300 users,
19 correct?

13:24:10 20 A. Correct.

21 Q. We talked before a couple years back, we talked
22 about the total number of employees in Hodell's
23 workforce.

24 You agree with me that it's always been the
13:24:26 25 case that Hodell has had less users on its computer

1 system than it has total employees, right?

2 A. To -- to some levels.

3 Q. Back in 2004, for example, when you were running on
4 the FACTS software system, you had about 160 employees,
13:24:50 5 right, at the end of 2004?

6 A. That sounds about right.

7 Q. And you had about 100 users on your FACTS system?

8 A. That's about right.

9 Q. So roughly two-thirds of your employees were
13:25:00 10 actually users of your computer system?

11 A. Yes. And I'm not sure how many Radio Beacon users,
12 so that would have been additional users.

13 Q. But it's always been the case that not all of your
14 employees are actual users of the computer system?

13:25:17 15 A. Correct. Typically it would be about 80 or 90%.

16 Q. You could put the development agreement down. I'm
17 done with that one.

18 As I understand your position, and you can
19 confirm for me or tell me if I'm wrong, your position is
13:25:44 20 that at no time before December, 2005 when you signed the
21 license agreement with SAP, were you aware that SAP was
22 marketing Business One to companies looking for up to 100
23 users, correct?

24 A. Can you restate that again? There was a lot in the
13:26:05 25 sentence.

1 Q. Sure.

2 A. Go ahead.

3 Q. Sure. Your position in this case is that at no

4 time prior to December of 2005 when you signed the

13:26:13 5 license agreement with SAP was Hodel aware that SAP was

6 marketing Business One toward target companies wanting up

7 to a hundred users?

8 A. Right.

9 Q. Okay.

13:26:26 10 A. The literature that we had seen was three and 500.

11 Q. And what you told Mr. Carney when he questioned you

12 is that at no time prior to signing the license agreement

13 had you yourself gone out on to the Internet or

14 investigated or done your own due diligence with respect

13:26:41 15 to the Business One product, right?

16 A. Right. I'm pretty sure I wouldn't have done that.

17 Q. All right. And you didn't go out and meet with

18 another company who was already using Business One,

19 correct?

13:26:54 20 A. Right.

21 MR. STAR: Bob, let's put up Exhibit 789,

22 please.

23 Q. Sir, this is a lengthy document, we can hand and

24 you hard copy if you'd like. It's 41 pages long. Let's

13:27:21 25 just focus on the first page.

1 You see about midway down, there's a series
2 of letters and numbers that say HODL 39955, do you see
3 that?

4 A. Yes.

13:27:36 5 Q. You'd agree with me that means this was a document
6 that was in Hodell's files and was produced by Hodell
7 during the course of this litigation, correct?

8 A. Correct.

9 Q. All right.

13:27:57 10 MR. STAR: Bob, let's go to Page 4, please.

11 Q. And by the way, I'm sorry, stay right there, the
12 document is titled "SAP Business One Overview" and it
13 shows it's by somebody named Volker Anders, SAP Business
14 One Solution Management, SAP AG.

13:28:16 15 And go to Page 4 if you're there.

16 MR. STAR: Bob, blow up the page, if you
17 can.

18 Q. See down in the bottom left-hand corner it says SAP
19 AG 2005?

13:28:35 20 A. Yes.

21 Q. Next to that it says "SAP Skills, November, 2005
22 Conference"?

23 A. Right.

24 Q. And if you go over to the right you see those same
13:28:45 25 letters and numbers, HODL, this time 39958?

1 A. Right.

2 Q. That means you had this and produced this document
3 in this case?

4 A. Yes.

13:28:55 5 Q. And if you go above that, here's what it says.

6 "SAP Business One is an affordable,
7 integrated business management solution that helps you
8 increase profitability and gain better control of your
9 business."

13:29:09 10 Below that, "SAP Business One Facts: For
11 companies with 10 to 100 employees."

12 This document was in your possession,
13 wasn't it, sir?

14 A. No.

13:29:20 15 Q. You produced it in this case, didn't you?

16 A. It was found as we were preparing for the
17 litigation. We didn't have this in our possession in
18 2005 like you're trying to portray.

19 Q. I'm not trying to portray anything, sir.

13:29:32 20 A. Okay.

21 Q. You produced this document from your files in this
22 case, correct?

23 A. Correct.

24 Q. Okay. When you looked for this information, you
13:29:40 25 found it, right?

1 A. Yes. I believe we found it in 2008 or '9.

2 Q. When you also took the time to look, you found the
3 document that's Exhibit 5.

4 MR. STAR: Bob, can you pull that up,
13:29:53 5 please?

6 Q. Exhibit 5 is an article off the Internet, isn't it?

7 A. Yes.

8 Q. And Hodell found that when it ran its own Internet
9 search, correct?

13:30:11 10 A. Yes, it was found in late 2007.

11 Q. Right. When you bothered to go on the Internet and
12 take a look.

13 A. Actually it was -- I think it was -- couldn't have
14 been found earlier than late 2007, and we found it in, it
13:30:23 15 would have been 2008 as we were preparing for this
16 lawsuit.

17 Q. That is when you found it, but the article, let's
18 zoom in, Bob, zoom in on the top. Can you blow that up?

19 The article's from November 1st, 2005,
13:30:46 20 right?

21 A. Right.

22 Q. This is something you found on the Internet and it
23 says the following: "With regard to SAP Business One
24 2005," which by the way, that's the version of Business
13:30:59 25 One that Hodell was running, correct?

1 A. Correct. But we were not running it in 2005.

2 Q. I understand. You didn't go live with any of the
3 software that's at issue here until 2007?

4 A. Right.

13:31:12 5 Q. But this article in November, 2005 is referring to
6 the version of Business One you ultimately used, correct?

7 A. Correct.

8 Q. And here's what it says: "SAP has just released
9 new functionality for their starter ERP package aimed at
13:31:27 10 companies who are looking for 10-100 users."

11 That's the kind of information you found
12 when you looked on the Internet, correct?

13 A. Yes, at a later time.

14 Q. Okay. Bob, you can take that one down. Thanks.

13:31:55 15 As we established earlier on, you never
16 spoke with anybody actually employed by SAP until after
17 you went live in 2000 -- March of 2007, correct?

18 A. Again, we didn't speak with anyone because we were
19 working through their channel partner. I --

13:32:12 20 Q. Just trying to confirm the facts.

21 You didn't speak with anybody from SAP?

22 A. That's correct.

23 Q. Okay. Thank you.

24 But you were working with people from
13:32:19 25 IBIS/LSi, they were at your site all the time, right?

1 A. Right.

2 Q. People like Marcia Weissman, you got to know her?

3 A. Right.

4 Q. People like Jon Woodrum, you got to know him?

13:32:30 5 A. Right.

6 Q. Right. There's a bunch of other people you were in
7 communication with and meeting face-to-face with from
8 IBIS/LSi, right?

9 A. Right.

13:32:37 10 Q. And this was going on for a period of a couple
11 years, you were working on this project since you signed
12 that development agreement in December of 2004, right?

13 A. They would have been on site to prepare for
14 implementation, not during the -- when they were
13:32:52 15 developing the software.

16 Q. But people were on site from IBIS/LSi for months on
17 and off, were they not?

18 A. When we were preparing to go live.

19 Q. Yes. And at no time did you personally observe
13:33:06 20 anybody from SAP actually controlling anything the people
21 from IBIS/LSi were doing, correct?

22 A. Can you say that again?

23 Q. Sure. At no time did you personally observe or
24 witness anybody from SAP actually controlling or
13:33:23 25 directing or supervising the work that the people from

1 IBIS/LSi were doing when they were on site at Hodell,
2 right?

3 A. Correct.

4 Q. Last topic. We will go over the license agreement.

13:33:43 5 MR. STAR: Bob, can you bring that one up?
6 It's 316, please. Why don't we give him a copy of it as
7 well, hard copy.

8 BY MR. STAR:

9 Q. Sir, you're the one who signed this license
13:34:42 10 agreement on behalf of Hodell, correct?

11 A. Yes.

12 Q. And when we talked about this a couple years back,
13 you told me you read this entire thing along with your
14 father very carefully, right?

13:34:53 15 A. Right.

16 Q. And that, in fact, happened?

17 A. Right.

18 Q. You took this very seriously?

19 A. We reviewed it and signed it, yes.

13:35:02 20 Q. And you understood everything that was written in
21 this document, right?

22 A. Yes. It was pretty boilerplate.

23 Q. Nothing was confusing to you?

24 A. No. I indicated that there was something that was
13:35:17 25 confusing to me, that I don't know what section it was

1 in. I testified to it yesterday, that in the agency, the
2 agency clause, it said about -- it talked about the
3 resellers, not their agent, yet LSi presented this
4 document to me; not SAP.

13:35:42 5 So I thought that was strange.

6 Q. So you found that confusing, but you never picked
7 up the phone or sent an e-mail or got in touch with
8 anybody at SAP about that, right?

9 A. No. They were presenting it through LSi.

13:35:55 10 Q. But you never spoke with anybody at SAP and told
11 SAP that you were confused in any way, shape, or form
12 about what was in this contract, did you?

13 A. No.

14 Q. Let's walk through it.

13:36:10 15 Hodell's called the licensee, right?

16 A. Are we at the top here?

17 Q. Yes.

18 A. Yes.

19 Q. Look at Paragraph 1.6, if we can blow that up, Bob.
13:36:40 20 Maybe just blow up the whole -- maybe just blow up the
21 whole section there, Bob.

22 It's a little difficult to see on the
23 screen. The document's been copied so many times but you
24 have a hard copy there.

13:37:02 25 You see in Paragraph 1.6 it defines the

1 term, "Named users," right?

2 A. Yes.

3 Q. It says, "It means, named users means any
4 combination of users listed by permitted functionality
13:37:15 5 and any other SAP required information and licensed by
6 SAP to licensee." That's Hodell. "Under this agreement
7 pursuant to the order for the software placed by licensee
8 Hodell or on its behalf by an SAP reseller," which would
9 have been IBIS/LSi.

13:37:35 10 Do you see that?

11 A. Yes.

12 Q. So named users, you would agree, was defined
13 pursuant to an order for software that would be placed
14 with SAP, right?

13:37:43 15 A. Right.

16 Q. Put that one down for a second. We're going to
17 come back to it?

18 MR. STAR: Bob, can you pull up Exhibit
19 138, please? Blow up the top of that, if you could, Bob.

13:38:11 20 Q. Sir, you would agree with me this is an order form
21 for 80 user licenses that was placed with SAP on December
22 22nd, 2005, the day before the license agreement,
23 correct?

24 A. I don't know what this is. I haven't seen this.

13:38:25 25 Q. You're claiming you're not aware of this document?

1 A. I think it was produced, wasn't it produced by SAP?

2 Q. It was.

3 A. Okay.

4 Q. But you've seen this document before, haven't you?

13:38:36 5 A. It may have been in the -- I mean, I don't recall
6 specifically going through it, but if it was produced
7 then it was produced.

8 Q. But you're not disputing that on December 22nd,
9 2005, an order form for 80 Business One user licenses was
13:38:52 10 sent to SAP, are you?

11 A. That's what it appears to be.

12 Q. Thank you. Let's go back to the license agreement.
13 Yesterday you were asked some questions as
14 to whether the license agreement mentions SAP AG or
13:39:09 15 applies to SAP AG at all.

16 Take a look at Paragraph 1.7.

17 MR. STAR: Bob, maybe just blow up that
18 whole thing, 1.7.

19 BY MR. STAR:

13:39:23 20 Q. Talks about proprietary information, right?

21 A. Right.

22 Q. And it says that means with respect to SAP and SAP
23 AG, in parens defined as the licensor of the SAP
24 proprietary information to SAP, and it goes on.

13:39:38 25 You see SAP AG being mentioned in this

1 contract, right, sir?

2 A. Right.

3 Q. Let's go down to Paragraph 1.10 on the first page.

4 MR. STAR: Blow that whole thing up. No,
13:40:11 5 the first, first page of the license agreement, Bob. Not
6 the main schedule; the license agreement. There we go.

7 BY MR. STAR:

8 Q. We see here on the first page of the license
9 agreement, Paragraph 1.10, it defines the term
13:40:39 10 "Software," right, in quotes? Capital S software, right?

11 A. Right.

12 Q. "Software means the SAP Business One software
13 product developed by or for SAP and/or SAP AG and
14 delivered to licensee Hodell hereunder pursuant to the
13:41:01 15 order for the software, including without limitation
16 present and future orders placed by licensee Hodell or on
17 its behalf by an SAP reseller."

18 Do you see that?

19 A. Yes.

13:41:14 20 Q. Again it mentions SAP AG, right?

21 A. Yes.

22 Q. And again it mentions the software is that software
23 pursuant to orders actually placed with SAP, right?

24 A. Right.

13:41:27 25 And as I testified yesterday, this was

1 presented when we had purchased 40 additional licenses
2 from LSi.

3 Q. You can explain that when your counsel asks you
4 questions. I don't have a question pending.

13:41:41 5 Move to strike that.

6 THE COURT: Okay.

7 BY MR. STAR:

8 Q. No one forced you to sign this license agreement,
9 right?

13:41:49 10 A. I'm sorry?

11 Q. No one forced you to sign this license agreement?

12 A. No.

13 Q. Let's walk through some of its other provisions.
14 Let's go to Page 3, Article 7.

13:42:17 15 MR. STAR: Why don't you blow up the whole
16 Section 7.1 through 7.3, Bob.

17 Q. You agree with me that Article 7 is headed
18 "PERFORMANCE WARRANTY/MAINTENANCE" in all caps, do you
19 see that?

13:42:32 20 A. Yes.

21 Q. And it provides in 7.1, the warranty that Hodell's
22 going to receive, correct?

23 A. Correct.

24 Q. That's the warranty you're actually going to get on
13:42:40 25 the Business One software you order and receive from SAP,

1 right?

2 A. That LSi orders and we receive.

3 Q. You receive the software. This is the warranty?

4 A. Right.

13:42:51 5 Q. On the software you received from SAP, right?

6 A. Correct. Correct.

7 Q. Let's walk through it.

8 SAP warrants that the software, which is
9 Business One, correct?

13:43:01 10 A. Correct.

11 Q. "SAP warrants that Business One will substantially
12 conform to the functional specifications contained in the
13 documentation for six months following delivery."

14 Goes on to say, "The warranty shall not
13:43:16 15 apply, one, if the software is not used in accordance
16 with the documentation or, two, if the defect is caused
17 by a modification, integration add-on, the licensee,
18 third party software, or third party database."

19 So you understand -- you understood SAP was
13:43:39 20 providing no warranty for any of the add-on products that
21 you were purchasing as part of your overall customized
22 solution, correct?

23 A. Correct.

24 Q. The only warranty SAP provided was this warranty
13:43:52 25 that we just read related to Business One, correct?

1 A. Correct.

2 MR. STAR: I have no further questions.

3 THE COURT: Thank you.

4 You may redirect.

13:44:38 5 REDIRECT EXAMINATION OF KEVIN REIDL

6 BY MR. CARNEY:

7 Q. Mr. Reidl, you were asked a number of questions on
8 cross-examination. I'm going to try and cover some
9 ground here, but my hope is I'll be fairly brief.

13:45:33 10 You were asked about the add-ons, Radio
11 Beacon and the In-Flight program.

12 Do you recall questions regarding that?

13 A. Yes, I do.

14 Q. What was your -- what was your understanding of the
13:45:49 15 customability of Business One at the time you agreed to
16 purchase Business One?

17 A. As I said, that was an important factor in our
18 purchase, that it could, in fact, be customizable.

19 And In-Flight was that feature that could
13:46:14 20 provide that customizability that would represent some of
21 the functionality that we needed.

22 Q. And, in fact, your FACTS system, your LEGACY system
23 that you operated for over 15 years, that had a
24 customability component to it as well, correct?

13:46:33 25 A. Yes, it did.

1 Q. Now, you recall Mr. Star showing you a series of
2 e-mails between you and your father, and in particular
3 you and representatives of LSi relating to performance
4 issues prior to going live on Business One.

13:47:05 5 Do you recall that?

6 A. Yes, I do.

7 Q. Now, had all of the performance issues you saw
8 during testing, had they all been fixed?

9 A. No, not all of them.

13:47:19 10 Q. Why did you decide to go live?

11 A. Because they had improved quite a bit
12 since -- dramatically, and I think I testified yesterday
13 that there is no perfect go-live, there is no hundred
14 percent perfect go-live and LSi represented to us, Dan
13:47:42 15 Lowery and Jon Woodrum represented to us that the
16 remaining bugs and issues and performance issues were
17 going to be fixed and addressed by them in conjunction
18 with SAP.

19 Q. Were the remaining bugs and issues that you just
13:47:54 20 described, were they, at the time you went live, were
21 those manageable for your business that you saw in the
22 testing?

23 A. In the testing?

24 Q. Yes.

13:48:03 25 A. To our understanding, they were -- they were

1 manageable and LSi felt the same.

2 Q. You were asked a series of questions regarding why
3 you didn't involve or report the issues that were seen
4 during testing directly to SAP prior to going live.

13:48:28 5 Do you recall that?

6 A. Yes.

7 Q. Why didn't you report testing issues to SAP prior
8 to going live?

9 A. This, this solution was entirely sold, marketed,
13:48:48 10 and represented to us by LSi, their channel partner.

11 And every step of the way that was the
12 case. There, if I went to pick up a phone and call SAP,
13 I don't even know how I could get that number, but it was
14 always represented by LSi, their business partner.

13:49:06 15 Q. Do you know if LSi was having communications with
16 SAP during the testing phase?

17 MR. STAR: Objection, foundation.

18 THE COURT: You can answer that yes or no.

19 A. My understanding is they were.

13:49:19 20 Q. Thank you. There was also a series of questions
21 about transaction logs, and Mr. Ashley -- excuse me,
22 Mr. Ashley? Mr. Star, in his cross-examination of you,
23 took you to task for not developing a transaction log to
24 document all of the issues such as the delays that
13:49:59 25 Hodell-Natco was experiencing after it went live.

1 Do you recall that testimony?

2 A. Yeah, we were talking about video recording people.

3 Q. Why didn't you prepare a transaction log to
4 document all of the speed issues that Hodelle experienced
13:50:20 5 post-go-live?

6 A. We were entirely focused on trying to run our
7 business, trying to serve our customers.

8 We didn't have time to videotape people
9 that were taking orders. We were all working towards
13:50:34 10 serving our customers.

11 I said that yesterday. I said it again
12 today. We had all 175 people working tirelessly, early
13 in the morning, late at night, on weekends to serve our
14 customers.

13:50:48 15 We were not focused -- I'm sorry, we were
16 not focused on videotaping people taking orders or
17 creating that log.

18 MR. CARNEY: Kim, could you pull up Exhibit
19 320? Can you blow that up, please?

13:51:51 20 Q. This is an e-mail exchange that you had with Dan
21 Lowery. The first e-mail in that exchange was an e-mail
22 you had with Dan Lowery, but I'd ask Kim to go to the
23 next page. I believe it was an e-mail between Mr. Reidl
24 and Mr. Woodrum.

13:52:45 25 MR. CARNEY: It's not showing up on my

1 screen.

2 Your Honor, if you don't mind, could
3 I -- I'm going to go back to counsel table and get a hard
4 copy of the exhibit.

13:52:53 5 THE COURT: Sure. Sure.

6 BY MR. CARNEY:

7 Q. Mr. Reidl --

8 A. Yes.

9 Q. -- I'll come back to that.

13:53:54 10 Now, you were asked about an e-mail,
11 Mr. Reidl, concerning there was an e-mail exchange
12 between you and Joe Woodrum in May of 2007 when he
13 visited the St. Louis warehouse location of Hodell-Natco.

14 A. Yes.

13:54:16 15 Q. Do you recall that testimony?

16 A. Yes.

17 Q. And his e-mail conveyed, you know, he observed a
18 91-line transaction being completed in two or three
19 seconds.

13:54:34 20 Do you recall that testimony?

21 A. Yes. Two --

22 Q. In that e-mail?

23 A. Two to three seconds per line I think is what
24 the --

13:54:40 25 Q. Okay. Two to three seconds per line.

1 Do you recall the time of day Mr. Woodrum
2 was at your facility?

3 A. Yes. He indicated that he was there from 7:00 in
4 the morning until about noon.

13:55:02 5 Q. What is peak use? What would be peak use time on
6 the Hodell-Natco ERP system when you were working with
7 Business One?

8 A. Peak use is typically from about noon to 4:30 or
9 5:00 o'clock, because we have people in different time
13:55:27 10 zones and east coast, they're logging in earliest and
11 then midwest and then working west.

12 So the people on the west coast aren't
13 logging in until 11:00 or 11:30 east coast time.

14 So the reason why the afternoon is the peak
13:55:44 15 is that's when the most, the highest number of users are
16 on the system. So early in the morning there were fewer
17 users on the system because it was east coast, and then
18 by 12:00 or 1:00 o'clock, everyone from all time zones
19 was on the system using it at the same time.

13:56:06 20 Q. Now, you mentioned -- well, let me ask you, did
21 your employees take steps such as workarounds to help
22 with the productivity of the Business One system?

23 MR. STAR: Objection. Leading and
24 foundation.

13:56:20 25 THE COURT: Overruled.

1 MR. STAR: Outside the scope.

2 A. Yes, we did.

3 I mentioned a few times we were all, all in
4 it together, all working hard, late and early, so, yes,
13:56:31 5 we developed workarounds, and as an example, we've been
6 talking about order entry. One of the workarounds that
7 salespeople would take is they would write down the order
8 or, you know, have a copy of the order maybe that the
9 customer sent them, and they would work around by using,
13:56:50 10 entering it particularly if it was a large order with
11 three or 500 items, they would enter it either early in
12 the morning when there are fewer people on the system and
13 it was performing slightly faster, or later in the day or
14 on the weekend.

13:57:06 15 So that was an example of the kind of
16 workarounds that we would have.

17 Q. You recall in your cross-examination you were asked
18 a series of questions by Mr. Star where he took issue
19 with the fact that you didn't have any documentation with
13:57:38 20 regard to lost customers and lost sales and lost orders.

21 Do you recall that testimony?

22 A. Yes, I do.

23 Q. Why is it that your company didn't have those types
24 of documents?

13:57:52 25 I think Mr. Star cut you off from answering

1 that question.

2 A. Yes.

3 I asked to explain.

4 Yeah, we -- we didn't -- we weren't

13:58:02 5 receiving orders because our customer was placing them
6 with our competitors. We couldn't -- we couldn't, for
7 example, we couldn't quote, provide a quote to them fast
8 enough, and they would place that order with our customer
9 because it took too long to enter the quote, it took too
13:58:17 10 long to get through the line items, look up the
11 inventory, look up the pricing, and our salespeople were
12 struggling to try to keep up to enter the orders that
13 they had.

14 So that slowness was pervasive throughout
13:58:30 15 the organization and we were doing everything that we
16 could to hold on to the business.

17 Q. This chart that you were asked to testify about, I
18 believe it was marked as Exhibit 907.

19 A. Yes.

13:58:51 20 Q. Just a couple questions.

21 Is gross sales an indicator of
22 profitability?

23 MR. STAR: Objection. Calls for an expert
24 opinion.

13:59:01 25 THE COURT: Objection sustained.

1 BY MR. CARNEY:

2 Q. Now, how long has Hodell been on Profit 21?

3 A. Since April of 2009, so about six years now.

4 Q. Are the functional issues that you experienced with
13:59:38 5 Profit 21 when you first implemented that software
6 system, do they still exist?

7 A. No.

8 Q. You were asked in your cross-examination a series
9 of questions regarding documents between Hodell-Natco and
14:00:15 10 IBIS about the FACTS -- about the FACTS system and the
11 integration issues that you were experiencing with Radio
12 Beacon.

13 Do you recall that?

14 A. Yes.

14:00:28 15 Q. And those -- and the time frame of the e-mails that
16 you were looking at were in the July, 2003 time frame,
17 correct?

18 A. Correct.

19 Q. And you were specifically asked why you didn't
14:00:44 20 contact or copy anyone at SAP regarding these issues.

21 Do you recall that?

22 A. Correct, I do.

23 MR. STAR: Objection. Misstates the prior
24 question.

14:00:53 25 THE COURT: You can clear it up.

1 BY MR. CARNEY:

2 Q. Why didn't you contact SAP when you were having
3 issues with FACTS and the integration with Radio Beacon
4 in 2003?

14:01:08 5 A. They weren't a party to any of that. Why would I?

6 Q. You were also asked about a number of e-mails where
7 you were disheartened and upset with Dale Van Leeuwen
8 during the same time frame.

9 Do you recall that?

14:01:29 10 A. Yes.

11 Q. Why did you continue working with Mr. Van Leeuwen
12 when his company became affiliated with LSi?

13 A. Because he had intimate knowledge on the functional
14 requirements that would be used for In-Flight and our
14:01:53 15 industry, and so that was important to us.

16 He knew the functional requirements of our
17 industry as well as anyone, and so when he joined
18 with -- when his company joined with LSi, LSi had
19 significantly more resources to complete the product and
14:02:13 20 so it made very good sense for us to continue.

21 Q. Did LSi have the resources that IBIS lacked?

22 MR. STAR: Objection. Foundation.

23 A. Yes, it did.

24 THE COURT: Well, overruled.

14:02:31 25 A. Yes. In one of the e-mails put in front of me

1 where I was complaining to Dale, he answered by saying he
2 didn't have the resources; too many of his people were on
3 vacation and working other projects, and he didn't have
4 the resources, so we knew that was the case.

14:02:52 5 And when LSi purchased them, they did have
6 significantly more resources.

7 Q. Now, you were also asked on your cross-examination
8 whether or not Hodell had any records of the expenditure
9 with respect to the new software system, that being
14:03:19 10 Profit 21, do you recall that?

11 A. Yes.

12 MR. CARNEY: Kim, can you turn to Exhibit
13 621? That's Defendant's Exhibit 621. Excuse me,
14 Plaintiff's Exhibit 621.

14:04:01 15 MR. STAR: Your Honor, before he questions
16 or this is published to the jury, we object to this
17 document. This was prepared for litigation; it's not an
18 actual business record. It's hearsay.

19 THE COURT: Well, who prepared this?

14:04:13 20 MR. STAR: Mr. Reidl prepared it after
21 litigation was filed, in connection with filing
22 litigation. It's not an actual business record and it's
23 not supported at all by any backup documentation
24 whatsoever, none at all.

14:04:25 25 THE COURT: Well, you can -- let's hear

1 about it first then we'll see.

2 BY MR. CARNEY:

3 Q. Mr. Reidl, you have in front of you Exhibit 621.

4 Do you have that in front of you on the
14:04:42 5 screen?

6 A. Yes.

7 Q. I'm asking you because my screen isn't working.

8 A. Oh, yes, it's in front of me.

9 Q. Okay. Thank you.

14:04:48 10 What is the title of the document?

11 A. It's titled "Hodell-Natco P21 expenditures while on
12 SAP Business One."

13 Q. Okay. And this document appears to be a ledger of
14 payments that you made to Profit 21, is that correct?

14:05:12 15 A. That's correct.

16 MR. STAR: Objection. Foundation.

17 THE COURT: Objection sustained. Let him
18 tell us if he knows what it is.

19 A. Yes, this is a general ledger --

14:05:22 20 BY MR. CARNEY:

21 Q. Kevin, let me ask a question.

22 THE COURT: Okay.

23 Q. Can you please identify the document?

24 A. This is a business record of Profit 21 expenditures
14:05:34 25 while we were on SAP Business One. It is a business

1 record.

2 Q. And the first column there, there is a posting date
3 column that has -- what is that, what is that column
4 reflecting?

14:05:53 5 A. Those are posting dates indicating dates where
6 certain payments were made.

7 Q. And what was the total amount of payments made to
8 Profit 21 while Hodel-Natco was still operating Business
9 One?

14:06:17 10 A. \$506,000.

11 Q. And change, correct?

12 A. And change, yes.

13 Q. The next document I'd like to ask you about is
14 Exhibit 623.

14:06:47 15 MR. CARNEY: Kim, could you pull that up?

16 MR. STAR: Your Honor, same objection. No
17 foundation for this. This is hearsay. It's not actually
18 supported by backup documentation. It's not a business
19 record.

14:07:04 20 THE COURT: Well, I suppose we'll find that
21 out.

22 BY MR. CARNEY:

23 Q. It's a four-page document, correct, Mr. Reidl?

24 A. Correct.

14:07:15 25 Q. And what's the -- what's the title of the document?

1 A. "Hodell-Natco expenditures for P21 from P21 system
2 operation."

3 Q. And the last column on the right is identified as
4 check date?

14:07:38 5 A. That's correct.

6 Q. What does this column reflect?

7 A. That reflects the date that checks were cut and
8 issued.

9 Q. To whom?

14:07:51 10 A. To Profit 21, to Activant, their parent company.

11 Q. Can you turn to Page 4 of the document?

12 A. Okay.

13 Q. Okay, thank you. I'm just going to ask you about
14 the column second from the right captioned "Amount Paid."

14:08:19 15 What does that column reflect?

16 A. That's the amount of the checks that were paid.

17 Q. To Profit 21?

18 A. To Profit 21.

19 Q. After the system went operational at Hodell?

14:08:32 20 A. Yes.

21 Q. What's the total?

22 A. \$501,892.

23 Q. When you add them up, when you add those two
24 figures up on the two exhibits we just talked about,
14:08:46 25 where does that get you?

1 A. A little over a million dollars. A million and
2 9,000 dollars or 8,000 dollars.

3 Q. When Hodell-Natco went live on Business One, how
4 many licenses from SAP did it have?

14:09:13 5 A. 120.

6 Q. You were asked a lot of questions on
7 cross-examination about the development of the In-Flight
8 program, and Mr. Star characterized Hodell-Natco as a
9 developer of the In-Flight program.

14:09:44 10 Do you recall that line of questioning?

11 A. Yes.

12 Q. What was Hodell's role in the development of the
13 In-Flight program?

14 A. Our role was that we were going to be the first on
14:09:59 15 it, as I explained earlier today. We were going to be
16 the first on it; not developing it. We are not a
17 development company, not in the business of developing
18 software.

19 We're in the business of distribution, and
14:10:12 20 so our role was going to be that we would work with them
21 and be the first one live on this product.

22 Q. Thank you.

23 MR. CARNEY: Kim, could you pull up Exhibit
24 789? That should be one of the Defendant's Exhibits that
14:10:49 25 Mr. Reidl was asked about.

1 Q. Kevin, tell me when you have it in front of you.

2 A. I can see it.

3 Q. Okay. It's back.

4 And this is a -- what is this document?

14:11:14 5 A. SAP Business One overview.

6 Q. And it bears a Hodell Bates label somewhere on the
7 document, correct?

8 A. Correct.

9 Q. This is a document that Hodell-Natco produced in
14:11:29 10 discovery, correct?

11 A. Correct.

12 Q. Just to clear up the record here, when did
13 Hodell-Natco first become aware of this document?

14 A. In -- it would have been 2008 at the earliest when
14:11:43 15 we were preparing for this litigation.

16 MR. CARNEY: Kim, can you please go to
17 Exhibit 5 of Defendant's Exhibits?

18 Q. This is another document that Hodell-Natco produced
19 in this litigation, correct?

14:12:12 20 A. Correct.

21 MR. CARNEY: Kim, can you blow up the
22 second-to-last line on the document, "Posted by"?

23 A. Okay.

24 Q. Okay. My computer screen's not working again.

14:12:36 25 What does that line state?

1 A. It says, "Posted by Clinton Boyd, November 27th,
2 2007 at 3:14 p.m."

3 Q. Does that post date give you any type of indication
4 as to when you came across this particular document?

14:12:58 5 A. It would have been no earlier than November 27th,
6 2007, which is after they told us that the system wasn't
7 going to work for us.

8 Q. Thank you.

9 MR. CARNEY: I have no further questions.

14:13:12 10 THE COURT: Thank you.

11 Any recross?

12 MR. STAR: Yes, Your Honor, briefly.

13 RECROSS-EXAMINATION OF KEVIN REIDL

14 BY MR. STAR:

14:13:42 15 Q. Mr. Reidl, let's stay with Exhibit 5.

16 MR. STAR: Bob, if you could put that up.

17 Q. Sir, we went over this. Mr. Carney just asked you
18 a couple questions.

19 You agree with me this is an article from
14:14:03 20 November 1st, 2005, right?

21 A. Yes.

22 Q. Okay. You go down to the bottom of the article
23 above where it says "Comments" and it says there, "SAP
24 posted 10:59 p.m." and something called SAP ERP

14:14:23 25 Permalink, do you see that?

1 A. Yes.

2 Q. And then what Mr. Carney showed you were a series
3 of comments posted by other people after the article was
4 initially published on this Permalink site, correct?

14:14:36 5 A. Yes, it appears to be.

6 Q. Right. So the date he focuses on, November of
7 2007, that's just somebody adding a comment on top of a
8 document that had already been posted back in 2005,
9 right?

14:14:46 10 A. Right.

11 Q. Thanks. Mr. Carney asked you about your
12 communications, the letters your father and you were
13 having with Dale Van Leeuwen and IBIS back in 2003, July,
14 2003, when you were threatening to sue him, you were
15 telling him you were disheartened, you were questioning
16 how you could rely on him.

17 You remember those letters?

18 A. Yes.

19 Q. Mr. Carney suggested that my question to you was
14:15:11 20 something to the effect that why didn't you call SAP at
21 that time, but what we actually established was that all
22 of that predated SAP and Business One, correct?

23 A. That's correct.

24 Q. And so what I asked you wasn't whether you should
14:15:26 25 have called SAP at that time. You didn't have a

1 relationship with them, right?

2 A. That's correct.

3 Q. What I asked you is simply whether at any point in
4 the future you ever bothered to tell SAP what had been
14:15:37 5 going on between you and Van Leeuwen and IBIS years
6 earlier, and your answer was you hadn't, correct?

7 A. Correct.

8 Q. You were shown Exhibit 621 and 623. Let's look at
9 621. It's a single-page document, right?

14:16:00 10 A. Yes.

11 Q. That's the whole thing? Yes?

12 A. Yes.

13 Q. You're not aware of any actual supporting invoices
14 that go and would establish these actual numbers in this
14:16:15 15 document; they just haven't been produced to SAP in this
16 case, have they?

17 A. I don't know. I don't know. There's been many
18 pages produced.

19 Q. Okay. And what about with 623? Mr. Carney --

14:16:30 20 MR. STAR: If you could put that up, Bob.

21 Q. Here it is. It's coming up sideways, but
22 Mr. Carney, I think said this is a four-page document,
23 but this is the whole thing, right? One piece of paper?

24 That's what you're aware of that is

14:16:49 25 actually marked as 623?

1 A. I'm not sure. We looked through four pages, I
2 believe.

3 Q. In 623? We have one page from you. You believe
4 there are actually four pages?

14:17:02 5 A. I believe we flipped through four pages earlier.

6 Q. Sir, the same thing is true, though, with 623 as it
7 is with 621, you don't have any of the backup
8 documentations, you don't have actual invoices, you don't
9 have canceled checks, nothing like that, right?

14:17:15 10 You just have this?

11 A. I don't know if it's been produced or not in this
12 discovery. I can't tell you for sure.

13 Q. Sir, you prepared to testify today, didn't you?

14 A. Yes.

14:17:26 15 Q. You're the president of the company. You're
16 claiming that you suffered damages, right?

17 MR. CARNEY: Objection, Your Honor.

18 THE COURT: Overruled.

19 Q. You're claiming you suffered damages?

14:17:35 20 A. Correct.

21 Q. You've been preparing since you filed this lawsuit
22 in November of 2008 to be here today to testify on these
23 subjects, right?

24 A. Right.

14:17:43 25 Q. Yet you don't know if you've actually produced any

1 canceled checks or invoices or anything that would
2 support these figures, you just don't know?

3 A. I don't know.

4 Q. Thank you.

14:17:52 5 A. There was a lot of documentation that's been
6 produced.

7 MR. STAR: That's all I have.

8 THE COURT: Thank you, Mr. Reidl. You're
9 excused.

14:17:58 10 Watch your step going down.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: You may call your next witness.

14 MR. LAMBERT: Your Honor, if it please the
14:18:08 15 Court, the Plaintiff calls Dan Lowery to the stand.

16 MR. MILLER: Your Honor, may I approach
17 with counsel? I have a point to make about Mr. Lowery's
18 testimony.

19 THE COURT: Sure. Stand up and relax if
14:18:19 20 you want and stretch.

21 (Side-bar conference had off the record).

22 THE COURT: Mr. Lowery, step forward, sir.
23 Raise your right hand for me.

24

25

1 DANIEL LOWERY,
2 of lawful age, a witness called by the Plaintiffs,
3 being first duly sworn, was examined
4 and testified as follows:

14:20:14 5 THE COURT: Please have a seat.

6 MR. LAMBERT: Your Honor, before we get
7 started I'd like to do the exhibits the old-fashioned way
8 so may I approach the witness and give him a binder?

9 THE COURT: Of course.

14:20:34 10 Sir, would you tell us your full name and
11 spell your last name?

12 THE WITNESS: Daniel Lowery. And where I'm
13 employed?

14 THE COURT: No, spell your last name for
14:20:41 15 me.

16 THE WITNESS: Oh, L-O-W-E-R-Y.

17 THE COURT: Thank you.

18 MR. LAMBERT: And also, Your Honor, as
19 notice to the Court and to opposing counsel, given
14:20:53 20 Mr. Lowery's affiliation with the Defendant LSi-Lowery
21 Systems, Inc. And The IBIS Group, Inc., we intend to
22 treat Mr. Lowery as if on cross-examination here.

23 THE COURT: I don't see any reason for
24 that.

14:21:07 25 MR. LAMBERT: He's an affiliate of a party

1 opponent in the case, Your Honor.

2 THE COURT: No, he's not. Just go ahead.

3 DIRECT EXAMINATION OF DANIEL LOWERY

4 BY MR. LAMBERT:

14:21:18 5 Q. Mr. Lowery, where do you reside?

6 A. St. Louis, Missouri.

7 Q. Who's your current employer?

8 THE WITNESS: And could I mention something
9 here, Judge?

14:21:24 10 THE COURT: Nope, sorry.

11 THE WITNESS: I'm a little hard of
12 hearing --

13 THE COURT: You can mention that.

14 THE WITNESS: -- so if I ask you to repeat
14:21:30 15 something, I apologize.

16 MR. LAMBERT: My pleasure.

17 THE WITNESS: I apologize to the jury.

18 THE COURT: All right. I'm sorry about
19 that, yeah. Just make sure the lawyers don't mumble. If
14:21:39 20 you don't understand the question, just tell them.

21 THE WITNESS: I will ask them again.

22 MR. CARNEY: Your Honor, just a point to
23 make, I don't believe the witness was sworn in.

24 THE COURT: Yeah, he was.

14:21:50 25 MR. CARNEY: I apologize. I didn't hear.

1 THE COURT: They are all trying to trick
2 me. I got Panigutti watching my back.

3 BY MR. LAMBERT:

4 Q. Mr. Lowery, I'm sorry. Who is your current
14:22:07 5 employer?

6 A. Lowery Systems, Inc. is where I work.

7 Q. And what's your title with Lowery Systems, Inc.?

8 A. President, owner.

9 Q. Okay. And is the Lowery Systems, Inc., is that the
14:22:22 10 same thing as LSi?

11 A. It is.

12 Q. Okay. And LSi owns The IBIS Group, Inc., correct?

13 A. Yes.

14 Q. Okay. To your knowledge, LSi -- can I refer to
14:22:34 15 IBIS as -- IBIS Group as IBIS, is that all right?

16 A. Yes.

17 Q. Can I refer to LSi and IBIS jointly as LSi, is that
18 fair?

19 A. Absolutely.

14:22:43 20 Q. Okay. Was LSi named as a Defendant in this case?

21 A. It was. I'm here without counsel. I'm a salesman,
22 not a lawyer, so help me out here. I was a Defendant.

23 Q. Hodell sued LSi, correct?

24 A. Who did?

14:23:02 25 Q. Hodell sued LSi?

1 A. Yes.

2 Q. Okay. And to your knowledge is LSi still a party
3 to the case?

4 THE COURT: Well, they're not so --

14:23:11 5 A. I don't know.

6 THE COURT: Mr. Lowery, you don't have to
7 answer those questions. They're not a party to the case.

8 THE WITNESS: -- okay.

9 BY MR. LAMBERT:

14:23:17 10 Q. Mr. Lowery, you and I have spoken before today, is
11 that correct?

12 A. Yes.

13 Q. And we've spoken since your deposition was taken,
14 is that correct?

14:23:23 15 A. Yes.

16 Q. Okay. And your deposition was taken several years
17 ago?

18 A. Yes.

19 Q. And we agree that I requested that you come testify
14:23:37 20 here today, is that correct?

21 A. Correct.

22 Q. Okay. And I asked you to fly from St. Louis to
23 Cleveland to be here to testify?

24 A. Correct.

14:23:45 25 Q. And we even offered to help defray some of your

1 costs that you incurred to do that, right?

2 A. Correct.

3 Q. It's expensive to come from St. Louis to Cleveland?

4 A. Correct.

14:23:56 5 Q. But we agree that no one has told you how to
6 testify here today?

7 A. No.

8 Q. And you intend to testify truthfully and honestly
9 here today, is that correct?

14:24:06 10 A. Yes.

11 Q. Can you tell me the nature of LSi's business?

12 A. It's exclusively a software company now.

13 Q. How long has LSi been in operation?

14 A. 1989.

14:24:24 15 Q. Since 1989?

16 A. Um-hmm.

17 Q. And you've been involved with LSi since 1989?

18 A. Yes.

19 Q. What do you mean by, I think you referred to it as
14:24:32 20 a software operation, is that what you said?

21 A. Well, over the years, it's had other pieces to it.
22 It sold -- it was an IBM business partner. That's
23 closed.

24 It was an SAP reseller. That's closed.

14:24:50 25 It was a Lotus Notes company. That's

1 closed.

2 Now we're down to where we sell and support
3 FACTS with a couple of industry verticals or add-ons as
4 you guys --

14:25:05 5 Q. Okay. How long have you been in the software
6 business, for lack of a better term?

7 A. Well, really since 1973. I started with IBM. I
8 was a salesman there, selling software, hardware, and
9 basically have been in it since then.

14:25:24 10 So 43 years.

11 Q. Over 40 years, right?

12 A. Unfortunately, yes.

13 Q. Let's just cut to the chase.

14 LSi is a former channel partner of SAP,
14:25:41 15 right?

16 A. Correct.

17 Q. And LSi sold Business One to Hodell as a channel
18 partner of SAP?

19 A. It did.

14:25:49 20 Q. And the sale of Business One to Hodell occurred in
21 2004 and 2005?

22 A. Correct.

23 Q. Is that accurate?

24 A. That's correct.

14:25:59 25 Q. And the sale involved the execution of a

1 development agreement, is that correct?

2 A. Correct.

3 Q. Can you tell the jury a little bit about IBIS?

4 A. It's a company I bought in April of '04, April
14:26:19 5 28th, '04, from Dale Van Leeuwen.

6 And he also was a FACTS reseller, as LSi
7 was, and then we jointly started, when SAP was recruiting
8 partners to become channel partners for SAP Business One,
9 he and I talked closer and closer and he decided to
14:26:44 10 become a Business One partner, and we did, too, and then
11 we said, well, we should -- I should buy you because that
12 would -- we'd sell more, we'd have more customers, et
13 cetera.

14 So that's how that all rolled out.

14:26:58 15 Q. Okay. And just so I'm correct and so we're all
16 clear here, IBIS became an SAP Business One channel
17 partner at some point?

18 A. Yeah. It -- '03.

19 Q. 2003?

14:27:08 20 A. I believe, yeah.

21 Q. And --

22 MR. MILLER: Objection. Foundation.

23 THE COURT: Overruled.

24 Q. And LSi separately became a channel partner?

14:27:17 25 A. Correct.

1 Q. Also in 2003?

2 A. I think.

3 Q. Okay.

4 A. I'm not sure.

14:27:22 5 Q. And this was before LSi bought IBIS, correct?

6 A. Correct.

7 Q. Okay. And when did LSi buy IBIS?

8 A. April 28th, '04.

9 Q. And I think you covered it briefly, but why, why
14:27:40 10 the acquisition? Why did you buy IBIS?

11 A. Well, several reasons.

12 Dale wanted out, and we were in acquisition
13 mode at the time.

14 Q. "We" meaning LSi?

14:27:58 15 A. LSi.

16 Q. LSi was growing?

17 A. Yes.

18 Q. Okay.

19 A. Those were the good days.

14:28:03 20 Q. LSi is no longer an SAP channel partner, correct?

21 A. It is not.

22 Q. Can you describe for the jury the SAP channel
23 partner program as it existed when LSi was a channel
24 partner?

14:28:20 25 A. Sure.

1 Well, they were recruiting software
2 businesses that were already established and successful,
3 so when SAP approached us, we took it as kind of a badge
4 of honor or something because SAP was a prestigious name,
14:28:47 5 still is.

6 So to be a part of the SAP family was quite
7 a deal, so the offer was made. We sign up to become a
8 partner, and we had to give them \$10,000, send your
9 people to school, and start selling.

14:29:09 10 But we were excited to sell Business One.
11 Dale had already told me he was all excited about
12 Business One, had been down to I believe Atlanta and met
13 with Dan Kraus.

14 MR. MILLER: Objection, Your Honor.
14:29:21 15 Hearsay.

16 THE COURT: Objection sustained.

17 MR. MILLER: Move to strike.

18 THE COURT: Move on. Ask a question.

19 Excuse me, have him ask a question.

14:29:29 20 MR. LAMBERT: I'm sorry, I didn't hear the
21 objection just so I know not to --

22 THE COURT: Ask him another question.

23 MR. LAMBERT: Okay.

24 THE COURT: We don't need to know what
14:29:35 25 other people told him.

1 MR. LAMBERT: I wanted to make sure I obey
2 the objection so I'm going to move on.

3 BY MR. LAMBERT:

4 Q. Mr. Lowery, you agree with me that it was your job,
14:29:46 5 LSi's job, to sell Business One on behalf of SAP?

6 A. Yes.

7 Q. And LSi did that with SAP's expressed
8 authorization, is that correct?

9 A. Yes.

14:29:58 10 Q. And at the direction of SAP?

11 A. Yes.

12 MR. MILLER: Objection, Your Honor.

13 THE COURT: Let him answer the questions.

14 MR. MILLER: A leading question.

14:30:06 15 THE COURT: Right.

16 A. I could --

17 Q. Let me ask you a question.

18 A. Okay.

19 Q. Did LSi sell Business One under the direction of
14:30:16 20 SAP?

21 A. Yes.

22 Q. And what do you mean by under the direction of SAP?

23 A. We had a quota to sell.

24 Q. Anything else?

14:30:29 25 A. And we -- the plan for the business partner channel

1 was to build third-party add-ons; in this case, fastener
2 vertical we named In-Flight Enterprise.

3 So these were all -- we had another one
4 teed up, ready to be developed when we closed the
14:30:52 5 practice for equipment rental but that was never
6 developed. But we were excited because when we bought
7 IBIS we bought his intellectual property and his brain
8 power. He was very well respected in the fastener
9 industry. So we were excited about building our
14:31:05 10 fastener vertical and taking that to market. We thought
11 we could do some good there.

12 Q. And you said "He had a very good reputation."

13 I'm just, who are you referring to?

14 A. Dale, Dale Van Leeuwen.

14:31:15 15 Yeah, he was -- gave speeches at
16 conferences for fastener trade shows and things like
17 that. He was very well respected as a fastener expert.

18 Q. And do you know whether Mr. Van Leeuwen was also
19 recruited by SAP?

14:31:32 20 A. He was.

21 Q. Was LSi authorized by SAP to refer to itself as a
22 business partner?

23 A. Yes.

24 Q. Was LSi encouraged to do this?

14:31:44 25 A. Yes.

1 Q. Did SAP's name carry weight with potential
2 customers?

3 A. My ears. Did it carry weight? Yes.

4 Q. Did the SAP name --

14:32:01 5 A. Oh, yes.

6 Q. -- carry weight with potential customers in your
7 experience?

8 A. Opened the doors.

9 Q. It opened the door?

14:32:06 10 A. You bet.

11 Q. Okay. And was being an authorized channel partner
12 for SAP a prestigious thing?

13 A. Yes.

14 Q. Did SAP authorize LSi to use the SAP logo?

14:32:21 15 A. Yes.

16 Q. To your knowledge, was Business One only sold
17 through channel partners?

18 A. It was.

19 Q. SAP didn't have its own sales force?

14:32:38 20 A. No.

21 Q. To go sell Business One to customers?

22 A. Not to my knowledge. No, that was the nice part of
23 it. There was no direct channel as far as I know.

24 Q. So correct me if I'm wrong, but SAP used business
14:32:53 25 partners like LSi to sell Business One --

1 A. Correct.

2 Q. -- on its behalf?

3 A. Correct.

14:33:00

4 Q. And just so the record's clear, Mr. Lowery, can you
5 wait until I finish my question so the court reporter can
6 take it down and it will be clear in that way?

7 A. I will.

8 Q. I appreciate it.

14:33:14

9 Is it your belief that your position as a
10 channel partner of SAP -- is it your belief -- strike
11 that. Is your position that LSi's position as a channel
12 partner of SAP made LSi SAP's agent?

13 A. Yes.

14 MR. MILLER: Your Honor, objection.

14:33:30

15 THE COURT: Objection sustained.

16 Q. Mr. Lowery, can you turn to Exhibit 27 in your
17 binder?

18 A. Okay.

19 Q. Have you seen Exhibit 27 before?

14:33:47

20 A. Yes.

21 Q. Can you identify that document for the jury?

22 A. It's -- I don't know what they're called, but it's
23 Hodell suing SAP in the Northern District of Ohio,
24 Eastern Division, so it's a claim I guess.

14:34:06

25 Q. Well, is this the answer that LSi --

1 A. Oh, I'm sorry, answer to first amended complaint,
2 yes.

3 Q. And who was it filed on behalf of?

4 A. LSi.

14:34:23 5 Q. Was it also filed on behalf of the IBIS Group?

6 A. And The IBIS Group.

7 Q. Am I correct this is what your lawyer filed on
8 behalf of LSi and IBIS in response to the allegations in
9 Hodel's complaint?

14:34:39 10 A. Yes, when I had a lawyer. Yes.

11 Q. If you would turn to Page 2 of that document.

12 A. Page 2, I'm there.

13 Q. Yes.

14 MR. MILLER: Objection, Your Honor. We're
14:34:53 15 heading toward --

16 THE COURT: Objection sustained.

17 MR. MILLER: Thank you, Your Honor.

18 MR. LAMBERT: I'm sorry, what was the
19 objection?

14:35:00 20 THE COURT: It was sustained.

21 MR. LAMBERT: To the document in general?

22 THE COURT: Right.

23 BY MR. LAMBERT:

24 Q. Okay. Mr. Lowery, can you turn to Exhibit 28 in
14:35:05 25 your binder?

1 A. I'm there.

2 Q. Can you identify the document that's been marked as
3 Exhibit 28?

4 A. Responses, Defendant SAP and SAP AG's first set of
14:35:32 5 interrogatories to co-Defendants LSi and IBIS Group.

6 Q. Can you flip through the document and see if those
7 are your responses to the document?

8 MR. MILLER: Your Honor, same objection.

9 THE COURT: Objection sustained.

14:35:46 10 MR. MILLER: These are lawyer prepared.

11 THE COURT: Objection sustained.

12 MR. LAMBERT: Okay. We'll move on.

13 BY MR. LAMBERT:

14 Q. Mr. Lowery, isn't it true that LSi made
14:35:56 15 representations to Hodell about the Business One
16 software?

17 A. To make sure I understood, we made the
18 representations to Business One -- about Business One
19 software to Hodell?

14:36:08 20 Q. Yes.

21 A. Yes.

22 Q. LSi, did LSi countersue SAP for damages in this
23 case?

24 A. I don't know.

14:36:25 25 Q. You don't recall?

1 A. I don't recall.

2 Q. Can you turn to Exhibit 30 in your binder?

3 A. One more time? I'm sorry.

4 Q. Can you turn to Exhibit 30 in your binder?

14:36:40 5 A. Okay. Okay.

6 Q. Can you identify that document for me?

7 A. That's an SAP Business One software marketing and
8 distribution agreement.

9 Q. Is this a document that LSi was required to execute
14:36:59 10 as part of becoming a channel partner with SAP?

11 A. Yes.

12 Q. If you'd turn to Page 28, if you see on the bottom
13 right-hand corner there's 30.28 in the bottom right-hand
14 corner. It will also pop up on your screen if you want
14:37:24 15 to look at it.

16 A. I'm there.

17 Q. Okay. Is that your signature?

18 A. That's my signature.

19 Q. Where it says LSi-Lowery Systems, Inc.?

14:37:31 20 A. That's me.

21 Q. And identifies yourself as president?

22 A. Yes, sir.

23 Q. And who is the counterparty to the agreement?

24 A. Gary Fromer.

14:37:41 25 Q. On behalf of?

1 A. Oh, on behalf of SAP America.

2 Q. The parties to the agreement are SAP America, Inc.
3 and LSi, correct?

4 A. Correct.

14:37:56 5 Q. Is this the document that gave LSi the right to
6 market Business One?

7 A. Yes.

8 Q. Can you turn back to the first page of that
9 document, Mr. Lowery?

14:38:12 10 A. Could you repeat that?

11 Q. Could you turn back to the first page of that
12 exhibit?

13 A. Yes, I'm sorry.

14 Q. All right. There's several whereas clauses on the
14:38:25 15 first page, do you see that?

16 A. I do.

17 Q. Can you read the third whereas clause for the jury?

18 A. "Whereas, SAP and reseller desire to successfully
19 partner via this agreement in order to pervasively
14:38:38 20 penetrate the small and medium enterprise U.S. market."

21 Q. And is the reseller referred to in that phrase you
22 just read for the jury, is that LSi?

23 A. Yes.

24 Q. To your knowledge, had IBIS executed a similar
14:38:54 25 document?

1 A. Yes.

2 Q. Could you turn to Page 9? It will say 30.9 in the
3 bottom right-hand corner.

4 A. Okay.

14:39:05 5 Q. Are you there?

6 A. I am.

7 Q. Okay. Thank you.

8 There's a section called, "Business
9 opportunity management," Section 4.3.

14:39:16 10 Do you see that?

11 A. I do.

12 Q. Can you read that section for the jury, Mr. Lowery?

13 A. 4.3, business opportunity management. "Reseller
14 shall use and maintain all customer leads in the sales
15 opportunity management system maintained by SAP, and
16 shall comply with all sales opportunity management
17 requirements as established by SAP from time to time."

18 Q. And did LSi, in fact, maintain its sales leads in
19 an SAP database that was maintained by SAP?

14:39:47 20 A. We did.

21 Q. Can you turn to the next page of that document,
22 sir? Are you there?

23 A. I am.

24 Q. Thank you.

14:39:57 25 A. I'm sorry.

1 Q. Thank you.

2 There's a Section 4.7?

3 A. Um-hmm.

4 Q. Called "Performance Targets."

14:40:04 5 A. Correct.

6 Q. Can you read that for the jury?

7 A. 4.7A, Performance Targets. "Reseller shall meet
8 the sales and other performance targets set forth in the
9 SAP partner program or as otherwise mutually agreed upon
10 by the parties in writing from time to time."

14:40:19

11 Q. Did LSi intend to do that?

12 A. Yes, I believe we did, some years very well.

13 Q. Can you direct your attention to Section 4.7C down
14 at the bottom page of that document?

14:40:41 15 A. Okay.

16 Q. Can you read -- what's the title of that section,
17 sir?

18 A. "Customer Satisfaction Targets."

19 Q. Can you read that for the jury?

14:40:52 20 A. "Reseller shall obtain and maintain customer
21 satisfaction ratings, as set forth in the SAP partner
22 program or as mutually agreed upon by the parties in
23 writing from time to time. Customer satisfaction target.
24 Customer satisfaction shall be measured by SAP in
14:41:09 25 substantially the same manner as SAP measures customer

1 satisfaction for its directly licensed customers."

2 Q. Thank you, sir. There's a section right under the
3 one you just read, 4.8, third-party products.

4 Do you see that?

14:41:26 5 A. Yes.

6 Q. And it discusses third party products, is that
7 correct?

8 A. Yes.

9 Q. Can you read the first sentence of that section for
14:41:38 10 the jury?

11 A. "Third-party products. Due to the unusual
12 complexity of the software, some third-party software and
13 hardware may not be compatible with the software, may
14 impose special support obligations or may hinder the
14:41:51 15 software's use, thereby causing damage to SAP and/or the
16 reseller."

17 Q. And then there's a -- the next sentence begins with
18 "Therefore."

19 Do you see that?

14:42:04 20 A. I do.

21 Q. Can you read that sentence for the jury?

22 A. "Therefore, the reseller agrees to not distribute,
23 support, promote, or recommend any third party product
24 for purposes of interoperating with the software which
14:42:18 25 has not been previously approved in writing by SAP or

1 otherwise has been made known to the public officially as
2 appropriate for use or interoperation with the software."

3 Q. And when the section's discussing the software, is
4 that SAP Business One, to your knowledge?

14:42:39 5 A. Correct.

6 Q. And when it's discussing third-party products, is
7 that referring to pieces of software that were developed
8 as add-ons for Business One?

9 A. Yes.

14:42:50 10 Q. And did LSi comply with this section of the
11 agreement?

12 A. I don't really know how to answer that because this
13 wording is complex.

14 Q. It's legalese in your opinion?

14:43:09 15 A. We -- we complied with everything SAP requested of
16 us, but this one says in writing and things like that.

17 I can't -- I can't say we had anything in
18 writing.

19 Q. Well, let's discuss it and let's back off of the
14:43:26 20 legal jargon in this section and talk about it like
21 regular people.

22 Did LSi make SAP aware of In-Flight?

23 A. Oh, my, yes. Yes.

24 We -- first you have to tell SAP you want
14:43:45 25 to develop a third-party add-on. To do that, you have to

1 go to a software development school called a software
2 development tool kit, I believe is the name of the class.
3 And then you have to buy that software development tool
4 kit for, I believe it was, \$10,000.

14:44:03 5 And that software development tool kit is a
6 set of software that helps you write the code for your
7 third party, so that it works with Business One.

8 Q. Who develops the software development kit?

9 A. SAP.

14:44:21 10 Q. That's an SAP product?

11 A. Um-hmm.

12 Q. Okay. Is that part of Business One?

13 A. No. I mean, it's a -- it's a tool kit to develop
14 third party add-ons for Business One.

14:44:32 15 Q. Okay. Can you turn to Section 4.9 of that
16 document? It's on the same page as the paragraph we just
17 read.

18 A. Okay. I'm there.

19 Q. Can you look at Subsection B under marketing and
14:44:49 20 advertising, and if you would, would you read that for
21 the jury?

22 A. D as in dog?

23 Q. B as in boy.

24 A. B as in boy?

14:44:57 25 "Reseller will be expected to participate

1 actively in trade shows and events suitable for promoting
2 the software and support services. All advertising,
3 promotions, and participation in the trade shows and
4 events shall be at reseller's expense, except as
14:45:15 5 otherwise agreed in writing between SAP and the
6 reseller."

7 Q. So SAP expected LSi to participate in trade shows
8 for SAP's products?

9 A. We did. Yes, they did.

14:45:32 10 Q. I want to direct your attention to the section you
11 thought I directed your attention to before, 4.9D.

12 A. Okay.

13 Q. Can you read that for the jury?

14 A. 4.9D, "All marketing and promotional materials
14:45:47 15 developed by or for the reseller, including but not
16 limited to, print advertisement, broadcast or telecast
17 commercials, product brochures, sales aids, manuals,
18 displays, and publicity concerning the software and
19 services shall be of first quality and graphically shall
14:46:04 20 be designed to meet the buying characteristics of the
21 target market. All such materials shall be submitted to
22 the SAP SMB business development manager to ensure
23 consistency with SAP and industry standards for review at
24 least 10 business days prior to publication,
14:46:23 25 distribution, or broadcast."

1 Q. So marketing materials that LSi intended to use for
2 SAP products needed to be submitted to SAP for approval?

3 A. Yes.

4 Q. Can you turn to the next page of that document,
14:46:40 5 sir?

6 A. Okay.

7 Q. There's a Section 4.10, information duties of
8 reseller.

9 A. I'm there.

14:46:47 10 Q. And it -- reseller again is LSi, is that accurate?

11 A. Correct.

12 Q. Can you read that section, the first section of
13 that 4.10 for the jury?

14 A. 4.10, information duties of reseller, the A, you
14:47:02 15 mean?

16 Q. Just A, yes, thank you.

17 A. "Reseller will regularly inform SAP about its
18 market, the marketing activities, and the results of its
19 sales efforts as related to the software. Such

14:47:13 20 information shall be considered reseller proprietary
21 information so long as the exclusions in Section 1.12 do
22 not apply to the information."

23 Q. And did LSi regularly inform SAP about its
24 marketing -- market and marketing activities and the
14:47:28 25 results of its sales efforts?

1 A. Yes.

2 Q. As it relates to SAP Business One?

3 A. Yes.

14:47:49 4 Q. Can you turn to, same section, 4.10C, and read the
5 first sentence of that section for the jury, sir?

6 A. Okay. 4.10C, "Reseller will provide accurate and
7 up-to-date marketing and forecasting information to SAP
8 on a regular basis, in accordance with Section 4.3,
9 including prompt updates concerning matters that
14:48:07 10 materially affect the current sales forecast. From time
11 to time, SAP may make special requests with respect to
12 marketing and forecasting information. Upon such
13 requests, reseller will use its reasonable efforts to
14 provide such information in an organized, timely, and
14:48:25 15 accurate fashion."

16 Q. And LSi complied with that, to your understanding?

17 A. We did.

18 Q. And all these sections that we're reading off, to
19 your knowledge, IBIS was subject to as well?

14:48:38 20 A. Yes.

21 Q. By virtue of it having signed a similar document?

22 A. Correct.

23 Q. Can you read Section 4.10D as in dog for the jury?

24 A. "Reseller and SAP will conduct a yearly business
14:48:53 25 review, as directed by SAP."

1 Q. Do you recall ever being part of a yearly business
2 review with SAP?

3 A. Yes.

4 Q. Could you turn to Page 16 of that document?

14:49:24 5 A. Okay. I'm there.

6 Q. Can you look at Section 8, specifically 8.2?

7 A. Okay.

8 Q. Can you read that for the jury?

9 A. "Reports and meetings. Reseller shall submit those
14:49:47 10 reports and attend those meetings related to the business
11 and marketing and distribution of the software as
12 reasonably requested by SAP from time to time and
13 otherwise in accordance with the SAP partner program."

14 Q. Can you read Section 9.1 for the jury?

14:50:05 15 A. "Training obligation. Reseller and reseller's key
16 sales and marketing personnel and key technical and
17 support personnel shall attend an appropriate number of
18 designated SAP-sponsored software training courses at the
19 rates set forth in SAP's then-current SAP Business One
14:50:25 20 U.S. price list and conditions, or if not applicable,
21 then in accordance with SAP's then-current rates for such
22 services, or as otherwise may be reasonably determined by
23 SAP."

24 Q. Is that why, as you testified earlier, LSi sent
14:50:44 25 people to SAP training classes?

1 A. Yes.

2 Q. Because this agreement said LSi had to, correct?

3 A. Well, you wanted to. You know, to sell it, install
4 it, you know, you had to have a quality team of people,
14:51:07 5 and they had to be trained on Business One.

6 Q. And do you believe you had a quality team of
7 people?

8 A. I -- that is the best group I've ever had in 40
9 years. I mean --

14:51:21 10 THE COURT: Mr. Lambert, I may interrupt
11 you now. We'll take our afternoon recess.

12 Okay, folks, about 15 minutes. Keep in
13 mind the admonition.

14 THE CLERK: All rise.

14:51:30 15 (Jury out)

16 (Recess taken)

17 (Proceedings resumed in presence of the
18 jury as follows:)

19 THE COURT: Have a seat, folks.

15:14:40 20 Go ahead.

21 MR. LAMBERT: Thank you, Your Honor.

22 BY MR. LAMBERT:

23 Q. Mr. Lowery, we were going through the LSi SAP
24 America reseller agreement, do you recall that testimony?

15:14:54 25 A. I do.

1 Q. And we were covering some of the sections that
2 dealt with maintaining LSi's leads and an SAP database,
3 correct?

4 A. Correct.

15:15:03 5 Q. That was maintained by SAP?

6 A. Correct.

7 Q. Correct?

8 And the obligation to participate in the
9 yearly review by SAP?

15:15:09 10 A. Correct.

11 Q. And submitting reports and attending meetings and
12 trade shows put on by SAP?

13 A. Correct.

14 Q. Can you turn to Page 17 of that reseller agreement
15:15:23 15 with SAP, please?

16 A. What section are we on? I kind of --

17 Q. I'm sorry, Page 17?

18 A. Of Section 30? Tab 30?

19 Q. I'm sorry, yes. Yes, sir.

15:15:34 20 A. 30, 17?

21 Q. Yes. I specifically want to direct your attention
22 to Section 10.2 of that document.

23 A. Okay. I'm there.

24 Q. Could you read the first sentence of that section
15:15:51 25 for the jury?

1 A. 10.2. Audit. During the term of this agreement
2 and during the three-year period immediately following
3 termination, SAP shall have the right to audit the
4 reseller's records concerning reproduction and sub
15:16:06 5 licensing of the software, and any other obligations of
6 reseller to SAP under this agreement. Such audits shall
7 be conducted at SAP's expense, during normal business
8 hours following written notice, advance notice to
9 reseller not less than ten business days in advance, and
15:16:25 10 in a manner so as to not unreasonably interfere with the
11 reseller's business operations."

12 Q. And again directing just your attention to just
13 that first paragraph, it was your understanding that SAP
14 had the right to audit your business at any time,
15:16:39 15 correct?

16 A. Correct.

17 Q. Can you turn to the next page of that document,
18 Mr. Lowery?

19 A. All right. I'm there.

15:16:57 20 Q. Can you direct your attention to Section 10
21 point -- or, I'm sorry, 11.1B as in boy?

22 A. Okay.

23 Q. Can you read just the first sentence of that
24 paragraph for the jury?

15:17:14 25 A. 11.1B. "Notwithstanding any prior agreements to

1 the contrary, including any SAP end user agreements with
2 reseller, as of the effective date of this agreement, any
3 modifications or unauthorized extensions that are created
4 on behalf of reseller or any third party shall be the
15:17:33 5 exclusive property of SAP."

6 Q. Can you read the next sentence of that paragraph
7 for the jury?

8 A. "Reseller expressly assigns any existing rights in
9 such work to SAP and agrees to assign to SAP any such
15:17:49 10 rights that it may subsequently acquire, including but
11 not limited to patent rights."

12 Q. Thank you, sir. And can you direct your attention
13 down to the bottom of that page?

14 A. Okay.

15:18:05 15 Q. And specifically, Section 11.3.

16 A. 11.3?

17 Q. Yes, sir.

18 A. Okay. Trademarks?

19 Q. Right. Can you read 11.3A for the jury?

15:18:24 20 A. "11.3A. SAP hereby grants the reseller a
21 nonexclusive, nontransferable, limited license to use the
22 trademarks and service marks used by SAP, SAP AG, or
23 their licensors, in connection with the software
24 collectively the marks."

15:18:44 25 Q. And can you turn to the next page and read the very

1 last sentence of that paragraph for the jury?

2 A. "With respect to reseller's use of the marks,
3 reseller shall comply with SAP trademark use guidelines,
4 as same may be amended from time to time, as well as the
15:19:01 5 SAP partner program."

6 Q. And did LSi, in fact, use the logo of SAP and SAP
7 AG to your knowledge?

8 A. Yes.

9 Q. Did SAP or, I'm sorry, did LSi literature relating
15:19:23 10 to Business One and In-Flight -- let's back up.

11 Was there literature or documents relating
12 to Business One and In-Flight prepared by SAP and
13 given -- or prepared by LSi and given to Hodell?

14 A. Yes.

15:19:38 15 Q. And --

16 A. Well, we had plenty of collateral printed.

17 I don't know if we had it printed when we
18 were selling Hodell.

19 Q. Were there memoranda or other letters to Hodell
15:19:54 20 relating to the Business One and In-Flight program?

21 A. Well, there was SAP logoeing on the developer
22 agreement, wasn't there?

23 Q. Well, we'll get to that in a minute.

24 A. Okay.

15:20:07 25 Q. Did it --

1 A. Believe me, if we could use it, we put it on there,
2 I guess is how we did it.

3 Q. Did SAP prepare a press release to announce LSi's
4 introduction as a channel partner?

15:20:21 5 A. No. They were supposed to. That \$10,000 sign-up
6 fee, Dan Kraus said five of that would be used for a big
7 event to announce LSi in St. Louis, but that never
8 happened.

9 Q. Do you recall a template or anything that was given
15:20:39 10 to LSi as --

11 A. There may have been a template for press releases
12 that we used. I'm not sure.

13 Q. Well, can you turn to Exhibit 73 in your binder,
14 please?

15:20:51 15 A. Okay.

16 Q. Can you review that document for me?

17 A. It's a press release, March 15th, 2004. Okay.
18 It's for LSi as named partner to bring SAP Business One
19 in St. Louis.

15:21:07 20 Q. And what's the date of that document?

21 A. March 15th of '04.

22 Q. And is this on a template that was prepared and
23 provided to LSi by SAP?

24 A. I don't know. I mean, I can guess if you want me
15:21:25 25 to read it and see if I wrote it or something, but I

1 don't know.

2 MR. MILLER: Your Honor, I think that's not
3 necessary for him to be guessing.

4 A. It looks like it may have come from SAP.

15:21:37 5 Q. Well, do you recall having your deposition taken in
6 this case over the course of several days a few years
7 ago?

8 A. I remember the deposition, yeah.

9 Q. And I was there, correct?

15:21:46 10 A. Yes.

11 Q. And Mr. Star was there, correct?

12 A. Yes.

13 Q. And you were represented by Mr. Hume of the
14 Reminger firm at the time, is that correct?

15:21:56 15 A. Correct.

16 Q. And, you know, I asked you a bunch of questions and
17 you provided responses under oath, correct?

18 A. Okay.

19 Q. And --

15:22:04 20 A. Yes, I remember that.

21 Q. And you were given a chance to review that
22 deposition after it was taken, correct?

23 A. Yes.

24 Your question is?

15:22:19 25 Q. Give me a minute.

1 MR. LAMBERT: Your Honor, may I approach
2 the witness and give him a copy of his deposition?

3 THE COURT: You may.

4 A. Oh, okay. Is there a page number?

15:22:54 5 Q. I hope your arms are in shape.

6 Can you turn to Page 325 of your
7 deposition, Mr. Lowery? Or, I'm sorry, 352 of your
8 deposition.

9 A. Go to Volume 3 first, I guess.

15:23:11 10 What page?

11 Q. 352, sir.

12 A. Okay. I think I'm there.

13 Q. I'm sorry, 326. My mistake.

14 A. Okay.

15:23:53 15 Q. Actually, it would start on 325.

16 A. Okay.

17 Q. You see on Page, or on Line 12 of Page 325, I asked
18 you, "Have you seen Exhibit 73 before?"

19 A. Yes.

15:24:13 20 Q. And what was your response?

21 A. "Okay. Have you seen Exhibit? Yes." I said,
22 "Yes. What is it?"

23 Q. And I asked you what is it?

24 A. "It's a press release that SAP helped us put
15:24:26 25 together and we probably sent it out to local papers in

1 St. Louis."

2 Q. Thank you, sir. Let me direct your attention to
3 the third page of that press release, Mr. Lowery.

4 A. I'm sorry?

15:24:45 5 Q. The third page. It will say 73.3 in the bottom
6 right-hand corner.

7 A. Okay.

8 Q. Are we there?

9 A. I got -- okay. I think so. There's no page on the
15:25:01 10 bottom, but I think I know where you're at.

11 Q. It says -- there's a sentence that begins in the
12 middle "SAP Business One supports."

13 A. I'm there.

14 Q. Can you read that for the jury?

15:25:12 15 A. "SAP Business One supports companies with as few as
16 ten and as many as several hundred employees, and can be
17 implemented in as little as one week."

18 Q. And do you agree with me that where it says "Ten
19 and as many as several hundred employees," that means
15:25:29 20 users for the software?

21 A. Yes.

22 MR. MILLER: Objection, Your Honor.

23 THE COURT: Overruled.

24 Q. I'm sorry, what was your answer?

15:25:36 25 A. Yes.

1 Q. We saw the section of SAP's agreement with LSi that
2 talked about using the SAP logo.

3 Do you recall that a few minutes ago?

4 A. Yes.

15:25:52 5 Q. And you said that LSi did use SAP's logo, correct?

6 A. We did.

7 Q. Okay. Would you turn to Exhibit 134 in your
8 binder?

9 A. Okay.

15:26:11 10 Q. Can you identify Exhibit 134 for the jury?

11 A. SAP business partner co-op marketing guide,
12 guideline for application, use and reimbursement.

13 Q. Is this a document that was produced by LSi in this
14 litigation?

15:26:29 15 A. Is that a document?

16 Q. Is this a document that LSi produced as part of its
17 document production in this litigation?

18 A. I -- I don't know.

19 Q. You're not sure?

15:26:39 20 A. How would I know that?

21 Q. Can you turn to the first page, the very first page
22 of that document?

23 A. Yes, sir.

24 Q. It says "Slip sheet" at the top?

15:26:50 25 A. It says "SAP business partner co-op."

1 Q. The very page preceding that, sir?

2 A. Oh, introduction?

3 Q. No, the very first page.

4 A. I'm sorry. Okay.

15:27:03 5 Q. It has an exhibit sticker down at the bottom?

6 A. Yes.

7 Q. And then it has a Bates label up at the top, it
8 says LSi 9762?

9 A. You mean the very first page?

15:27:20 10 MR. MILLER: Your Honor, we'll stipulate
11 that this was produced by LSi.

12 A. Okay. LSi 9762 dot PDF, okay.

13 Q. That's going to make that pretty simple.

14 Thank you.

15:27:32 15 Could you turn to -- you've seen this
16 document before, correct?

17 A. Yes.

18 Q. And this was given -- was this given to LSi by SAP?

19 A. Yes.

15:27:44 20 Q. And it was given to LSi by SAP as part of LSi being
21 a channel partner?

22 A. Yes.

23 Q. For SAP?

24 A. Yes.

15:27:52 25 Q. Turn to the page, bottom right-hand corner, 134.4.

1 A. Okay. I'm there.

2 Q. Up at the top, there's an introduction?

3 A. Um-hmm.

4 Q. Can you read the first sentence of that

15:28:05 5 introduction for the jury?

6 A. "SAP business partner program was created to ensure
7 maximum market penetration for SAP and our partners."

8 Q. Is that your understanding of the purpose of the
9 partner program that LSi was a member of?

15:28:18 10 A. Yes.

11 Q. And that, was that your intent as the president of
12 LSi?

13 A. Yes.

14 Q. To comply with that first sentence?

15:28:28 15 A. Yes.

16 Q. Okay. There's a section leveraging the SAP brand.

17 Do you see that?

18 A. Yes.

19 Q. Can you read what it says directly under that for
15:28:37 20 the jury?

21 A. "The SAP brand has significant value. As a member
22 of our partner program, we encourage you to leverage that
23 brand for name recognition, quality standards and general
24 market awareness."

15:28:50 25 Q. And there's an SAP logo right below that that says

1 "Business partner," correct?

2 A. Correct.

3 Q. Can you read the first sentence right after SAP's
4 logo?

15:29:01 5 A. "SAP Business One partners may use the SAP business
6 partner logo on all appropriate marketing materials
7 related to Business One product."

8 Q. And LSi did, in fact, use the SAP logo on its
9 marketing materials, correct?

15:29:15 10 A. We did.

11 Q. And did that logo say "SAP America" or "SAP AG" or
12 did it just say "SAP"?

13 A. Probably on our marketing materials, it said
14 "Business SAP partner" mostly.

15:29:30 15 Q. But it didn't different between SAP America and SAP
16 AG. Just said SAP?

17 A. I don't know.

18 Q. Is it similar to the one we're looking at on the
19 current page?

15:29:40 20 A. Did it look like the one on this page?

21 Q. Right.

22 A. Yes.

23 Q. It doesn't mention SAP America or SAP AG, does it?

24 A. It does not.

15:29:48 25 Q. Thank you. I'd like you to flip a few pages

1 further back in that document for me, Mr. Lowery, to the
2 page that has 134.11 down at the bottom.

3 A. All right.

4 Q. There's a section called Press Releases and
15:30:09 5 Editorial Coverage.

6 A. Okay.

7 Q. Can you read the first sentence under -- under that
8 heading for me?

9 A. "Public coverage of our joint solution can provide
15:30:20 10 critical market awareness for little or no direct
11 expense."

12 Q. Joint solution, correct?

13 A. Correct.

14 Q. Is that your understanding of what you were
15:30:31 15 engaging in in the sale of Business One and In-Flight to
16 Hodell?

17 A. It was.

18 Q. A joint solution with SAP?

19 A. Yes.

15:30:37 20 Q. Can you read the first sentence of that second
21 paragraph, "Partners should use"?

22 A. "Partners should use the SAP Business One PR
23 template for press releases to announce the partnership."

24 Q. Is that the template that we just reviewed in
15:30:55 25 Exhibit 73?

1 A. I believe so, yes.

2 Q. Do you agree that SAP was exercising control over
3 LSi's marketing of the Business One product?

4 A. Control?

15:31:18 5 Q. I'm sorry. Given, given what we've just read, was
6 SAP monitoring how LSi marketed the Business One product?

7 A. Oh, yes.

8 MR. MILLER: Your Honor, could we have some
9 questions about what happened instead of just

15:31:32 10 complete --

11 THE COURT: Really. I mean --

12 MR. MILLER: Thank you.

13 BY MR. LAMBERT:

14 Q. Would you turn to Exhibit 9 in your binder,
15:31:41 15 Mr. Lowery?

16 A. Okay.

17 Q. Can you identify Exhibit 9 for the jury?

18 A. It's IBIS Group letterhead, SAP Business One, is
19 that the one we're talking about?

15:31:57 20 Q. Yes, sir.

21 A. SAP Business One for the fastener industry with an
22 SAP business partner logo, dated October, 2004.

23 Q. Is this a document that Dan Lowery and Dale
24 Van Leeuwen sent to Hodell relating to the Business One
15:32:24 25 product?

1 A. It is.

2 Q. And I want to direct your attention to the upper
3 right-hand corner of that document.

4 There's an SAP logo on that document,
15:32:35 5 correct?

6 A. Correct.

7 Q. And it doesn't say SAP America or SAP AG, does it?

8 A. I can't see it if it does. There's some little
9 tiny print below partner.

15:32:48 10 Q. You can clearly see it says SAP?

11 A. Yes.

12 Q. Was that placed on this document with SAP's
13 authorization?

14 A. Yes.

15:32:55 15 MR. MILLER: Objection, Your Honor.

16 THE COURT: Overruled.

17 Q. Did SAP allow you to put that logo on this
18 document?

19 A. Yes.

15:33:02 20 Q. And this was given to Hodell-Natco, correct?

21 A. This was what?

22 Q. This document was given to Hodell-Natco, correct?

23 A. Yes.

24 Q. In the course of being a channel partner for SAP,
15:33:23 25 did you personally have conversations with SAP employees

1 about the type of customer that Business One should be
2 sold to?

3 A. Yes.

4 Q. And what SAP employees specifically do you remember
15:33:37 5 speaking with?

6 A. Well, if we're talking about Hodell, the first one
7 was Dan Kraus when I told him we were -- when we felt we
8 could bring this deal down, I talked to him about the
9 price guarantees that we were going to need and that sort
15:33:56 10 of thing, and he was super ecstatic.

11 I believe this was the biggest order in the
12 history of Business One channel, I think, unless they've
13 sold a bigger one since we were out of the program.

14 Q. At the -- well, we'll get into that in a minute.

15:34:15 15 A. I could understand why they would be excited about
16 this transaction.

17 Q. I can, but my question is do you recall having
18 conversations with SAP employees about the type of
19 customer that Business One should be sold to in general?

15:34:28 20 A. Oh, yes. Sure.

21 Q. And what SAP -- what SAP employees do you remember
22 having those conversations with?

23 A. Well, Dan Kraus. Our primary contacts on the
24 management side were Dan Kraus, Geoff Ashley, Michael
15:34:46 25 Sotnick, although Michael Sotnick was a senior VP, we

1 didn't talk to him as regularly. Dan Kraus was the
2 primary driver.

3 Q. What was Dan Kraus's title with SAP to your
4 knowledge?

15:35:01 5 A. I think he was director of sales.

6 Q. What were --

7 A. I'm guessing, but I don't know.

8 Q. What, to your knowledge, what did he do as director
9 of sales?

15:35:10 10 A. He was the number two guy, clearly the number two
11 guy, but he ran the channel.

12 His job was to build the channel and
13 recruit the partners and get them up and running and he
14 was -- he was the guy.

15:35:24 15 Q. Dan Kraus was the gentleman that ran the channel
16 that LSi was a part of, correct?

17 A. Dan Kraus -- could you say that again?

18 Q. You said Dan Kraus ran the channel, is that what
19 you just said?

15:35:38 20 A. For SAP.

21 Q. For SAP?

22 A. Um-hmm.

23 Q. And that's the channel that LSi was a part of?

24 A. Business One channel.

15:35:42 25 Q. Right. Okay. What did Dan Kraus tell you about

1 the type of customer that Business One should be sold to?

2 A. Well again, early on what -- they sold it for the
3 small-to-medium-sized business sector, and this goes back
4 to when Dale went down there initially, one of the key
15:36:06 5 questions they were asking was because he knew he had
6 Hodelle teed up so he asked about --

7 MR. MILLER: Your Honor, this is someone
8 else's conversation.

9 THE COURT: Don't tell us -- tell us what
15:36:17 10 you did. Tell us what you did.

11 Q. We want to know, Mr. Lowery, I want to know what
12 was said to you.

13 A. Oh.

14 Q. To SAP employees about --

15:36:26 15 A. Right. They wanted to know the upper limits. I
16 had conversations with Dan about the upper limits of the
17 package because they knew Hodelle was coming, and he
18 assured me that would be no problem.

19 The term they constantly used over and over
15:36:40 20 was there's no theoretical maximum on the number of
21 users. So we, that's when we full bore started, and then
22 we were told by Dan and, you know, he had a staff
23 underneath him, Eddie Neveux, I can't remember all of
24 them, but, you know, we had to then get our staff
15:36:58 25 trained, we had to get our people up to speed, we had to

1 hire quite a few people to head this project up, what
2 types of people, they told us what skill sets they
3 needed, SQL, that type of thing.

4 Q. And just so I'm --

15:37:17 5 A. Constant, constant communications.

6 Q. Just so I'm clear, you recall having a conversation
7 with the head of the SAP Business One channel that you
8 were a part of in which that person told you there was no
9 theoretical maximum --

15:37:31 10 A. Yes.

11 Q. -- for the product?

12 A. Yes.

13 Q. The product being Business One?

14 A. Yes.

15:37:36 15 Q. Did he tell you whether there was any upper size
16 limit for which the product should be sold to?

17 A. No.

18 Q. Again, the product being Business One?

19 A. No.

15:37:47 20 Q. Is that one of the first questions that a company
21 like LSi asks when becoming a partner?

22 A. Yes.

23 Q. How big can we sell -- how big of companies can we
24 sell this to?

15:38:02 25 A. Can it scale -- FACTS had limitations there so we

1 all had the same goal, to get a product that didn't have
2 those limitations.

3 Q. Is that why you were, is that why LSi was
4 interested in becoming a Business One partner?

15:38:13 5 A. Yes, and the fact of the name. We saw SAP as a
6 very prestigious name to help us grow.

7 Q. Okay. So there were two components, the SAP name,
8 correct?

9 A. Yes.

15:38:22 10 Q. And the fact that you could sell to bigger
11 companies?

12 A. Yes.

13 Q. Or at least you were told you could, correct?

14 A. Correct.

15:38:35 15 Q. Did SAP have a sales methodology that it wanted
16 partners to follow?

17 A. Yes.

18 Q. And what was that, sir?

19 A. It was a very well put together document approach
15:38:56 20 that, you know, my salesman, Tim Lowe, followed to the
21 letter.

22 And it was -- it was quality stuff. It was
23 from the prospect acquisition all the way to selling.

24 Q. And just so I'm clear, the questions or the
15:39:14 25 conversations that you had with the head of SAP's

1 channel, as you referred to it, about the size limit for
2 Business One, do you remember that testimony a few
3 minutes ago?

4 A. Yes.

15:39:24 5 Q. Was that in regard to Hodell?

6 A. Specifically Hodell, but in general. We felt we
7 were going to sell a dozen Hodells.

8 Q. Okay. But the conversation that we have here --

9 A. It was specifically about Hodell, yes.

15:39:41 10 Q. Okay. Thank you.

11 You relied upon documentation that
12 SAP -- or did you rely upon documentation that SAP put
13 together in selling Business One to Hodell?

14 A. Yes.

15:39:58 15 Q. Do you recall SAP literature that was published by
16 SAP discussing the program?

17 A. Right. And presentations.

18 Q. Literature and presentations?

19 A. Um-hmm.

15:40:10 20 Q. Okay. Can you turn to Exhibit 34 in your binder,
21 sir?

22 A. Okay. All right. I'm there.

23 Q. Thank you. Do you -- can you identify this
24 document for the jury?

15:40:30 25 A. Press fact sheet, press fact sheet, October, 2003.

1 It's an SAP Business One fact sheet.

2 Q. Is this document part of the information that you
3 relied upon in marketing and selling Business One to
4 Hodell?

15:40:49 5 A. Yes.

6 Q. And what in particular in this document did you
7 rely upon in selling Business One to Hodell?

8 A. Well, obviously the, in the third paragraph, the
9 from 10 to several hundred employees.

15:41:11 10 Q. And why did you rely upon that section or that
11 statement?

12 A. Well, because that was the size we felt that Hodell
13 was going to be.

14 Q. And again, forgive me if I've already covered this,
15 15:41:26 but ten to several hundred employees in this document,
16 did you equate employees with users?

17 A. I did.

18 Q. So when it says "Ten to several hundred employees,"
19 you understood that to mean ten to several hundred users?

15:41:38 20 A. Correct.

21 Q. Do you recall anyone at SAP ever disagreeing with
22 your interpretation of employees equating to users?

23 A. Just in the depositions.

24 MR. MILLER: Objection, foundation. It's
15:41:55 25 never been established that it's from us.

1 THE COURT: Overruled. Overruled.

2 MR. LAMBERT: I'll restate it again so you
3 can hear me.

4 BY MR. LAMBERT:

15:42:02 5 Q. Do you recall anyone at SAP ever disagreeing with
6 your conclusion that ten to several hundred employees
7 meant ten to several hundred users?

8 MR. MILLER: Your Honor, there's no
9 foundation.

15:42:13 10 THE COURT: Yeah, you have to ask him if he
11 had, you know, the question, what his interpretation was.

12 BY MR. LAMBERT:

13 Q. Did you make SAP aware that you understood this
14 package to be capable of supporting ten to several
15:42:29 15 hundred users?

16 A. Yes. That's -- that's how I interpreted it.

17 Is that your question?

18 Q. And was SAP aware that that was your
19 interpretation?

15:42:37 20 A. One more time?

21 Q. Was SAP, was any employee of SAP aware that you
22 were under the belief that Business One could support ten
23 to several hundred users?

24 A. I felt they all were. They all believed that.

15:42:50 25 Q. And did any of those people disagree with your

1 conclusion?

2 A. When things started blowing up, we started hearing
3 that you guys made a mistake, you thought users were
4 equal to this, but not when it was being sold and
15:43:02 5 developed, no.

6 Depositions, I heard it in deposition, but
7 that's -- no, not when it was in --

8 Q. So years after the product was sold was the first
9 time you ever heard that, is that correct?

15:43:15 10 A. That's correct.

11 Q. Can you -- I want to direct your attention to the
12 first paragraph of that document, Mr. Lowery.

13 There's a sentence down at the end of that
14 paragraph that starts with "Small businesses."

15:43:36 15 Can you read that for the jury? It's the
16 very last sentence.

17 A. "SAP Business One also supports an open migration
18 path to mySAP all-in-one solutions and mySAP business
19 suite offering businesses of all sizes unprecedented
15:43:54 20 levels of integration amongst the parent companies,
21 subsidiaries, vendors, and partners that make up the
22 business ecosystem."

23 Q. I'm sorry, I must have directed you to the wrong
24 part.

15:44:05 25 Can I direct you to the very first

1 paragraph of that document?

2 A. Oh.

3 Q. Up at the top there.

4 A. Oh, "many smaller businesses"?

15:44:14 5 Q. No. Can you read the last sentence of that
6 paragraph for the jury?

7 A. Okay. "Small businesses should not have to worry
8 about ripping out an old system because it doesn't scale
9 with them when they achieve their growth goals."

15:44:26 10 Q. And to your knowledge, was that important to Hodell
11 in selecting an ERP system?

12 A. Yes.

13 Q. Why is that?

14 A. Well, they were on FACTS. Going to a new system is
15:44:39 15 a very painful migration, regardless of what you do. You
16 don't want to have to redo it. That's -- that's a big
17 selling point, as is the thing I read incorrectly.
18 That's a big selling point.

19 I'm sorry.

15:44:56 20 Q. Companies that -- like Hodell that buy ERP systems,
21 how long do they typically plan to spend on that system
22 when they purchase it?

23 How long do they plan to use it for?

24 A. That's difficult to answer.

15:45:12 25 I mean, when I was a young IBM guy, if you

1 got five years out of a system, you were -- that was
2 about it.

3 But I think that now today, well, when
4 Hodell bought theirs, I'm sure they were hoping for ten
15:45:27 5 years.

6 Now today people don't even hardly
7 get -- they don't replace them because they can't afford
8 it.

9 Q. But at the time that Business One was being sold to
15:45:37 10 Hodell, it would be a customer's normal expectation to
11 remain on that system for about 10 years?

12 MR. MILLER: Objection, Your Honor.

13 THE COURT: Objection sustained.

14 MR. MILLER: Thank you.

15:45:47 15 BY MR. LAMBERT:

16 Q. Can you turn to the next page of that document,
17 Mr. Lowery?

18 A. Um-hmm.

19 Q. I want to direct your attention to the paragraph
15:45:58 20 "Technology to support growth."

21 A. Okay.

22 Q. Again, this is part of the information you relied
23 upon in marketing Business One to Hodell?

24 A. I did.

15:46:06 25 Q. Can you read the first section -- or the first

1 paragraph of that section for me?

2 A. "Technology to support growth, an integrated sales
3 force automation system includes pipeline tracking,
4 opportunity management, strategic selling, and contact
15:46:23 5 management."

6 Is that what you want me to read?

7 Q. And did Hodell make it clear to you during the
8 sales process that they were looking for technology to
9 support their growth?

15:46:34 10 A. Yes.

11 Q. Was that ever a question in your mind as to why
12 Hodell was looking for a new ERP system?

13 A. No.

14 Q. It was always made very clear from day one?

15:46:47 15 MR. MILLER: Your Honor, this is the third
16 leading question in a row.

17 THE COURT: Objection sustained.

18 MR. MILLER: Okay.

19 Q. Can you direct -- I want to direct your attention
15:46:57 20 to the section titled "SDK," please.

21 A. Okay.

22 Q. What does SDK mean, if you know?

23 A. It means to me "software development kit, the new
24 SAP Business One solution development kit allows SAP
15:47:14 25 partners to extend and change functionality of SAP

1 Business One in order to create industry-specific
2 functionality, complementary capabilities, or interfaces
3 to a third-party tools and systems."

4 Q. Kim, would you mind highlighting that for me? I
15:47:33 5 want to spend a little time with this.

6 In laymen's terms, what is this paragraph
7 of this document discussing?

8 A. In laymen's terms, it eases the partner's ability
9 to develop code that works with Business One and ensures
15:47:57 10 that it works in the proper way with Business One.

11 Q. In your experience as a channel partner of SAP, was
12 that one of the main selling points for Business One?

13 A. I would say no, because that just -- that was just
14 one of those things they came and said Dan, we got to go
15:48:21 15 to SDK school, we got to learn to do this, and I said
16 okay, let's go.

17 Was it a selling -- maybe to the technical
18 people, but not to me it wasn't.

19 Q. No, I think my question was poorly phrased.

15:48:31 20 To -- for LSi, was it important that LSi
21 would be able to develop added functionality to SAP
22 Business One?

23 A. Oh, yes. Critical. I mean, then it became
24 supported, authorized, endorsed, whatever.

15:48:50 25 Q. What became supported and authorized and endorsed?

1 A. Third-party code. If you use the software
2 development tool kit, as I understood it, then that means
3 the code that is produced will work with the base
4 Business One package.

15:49:05 5 Q. Okay. And is that one of the reasons that LSi was
6 interested in becoming a Business One partner?

7 A. I'm not sure how to answer that.

8 Q. In other words, when --

9 A. To develop an add-on?

15:49:21 10 Q. Yes.

11 A. Oh, yes, it's critical.

12 Q. Why is that?

13 A. Well, that's the whole reason. My whole business
14 strategy was to develop add-ons, whereas some companies
15:49:31 15 don't. They just will sell the vanilla Business One, and
16 that's fine.

17 But we feel we control our future a lot
18 more by developing our own intellectual property.

19 Q. Can you read the last sentence of that SDK section
15:49:53 20 for the jury?

21 A. "The SAP Business One SDK encourages development
22 to provides customers with more choices and applications
23 for managing their business with SAP Business One."

24 Q. At any time, did anyone at SAP discourage LSi from
15:50:15 25 developing the In-Flight add-on product?

1 A. Oh, no. It was a big deal for them.

2 Q. A big deal for who?

3 A. SAP.

4 Q. Why is that?

15:50:23 5 A. Well, it's we sell more, we sell more Business One.
6 If we penetrate a -- like in this case, the fastener
7 industry and we could grab control of that, there's a big
8 number of sales right there for Business One.

9 Q. And that was LSi's intent?

15:50:44 10 A. Yes. It was our intent.

11 Q. And SAP's intent as well, to your knowledge?

12 A. And SAP's intent.

13 Q. And in the course of marketing and selling Business
14 One to Hodell, did you represent to Hodell that Business
15:51:02 15 One could be easily customized to fit the fastener
16 industry?

17 MR. MILLER: Objection, Your Honor. Could
18 we ask --

19 THE COURT: Overruled.

15:51:09 20 A. I don't know if the word "Easily" because this was
21 a big project.

22 Q. But the ability of Business One to be customized
23 with add-on products that Hodell needed --

24 A. Yes.

15:51:21 25 Q. -- was part of the selling point to Hodell,

1 correct?

2 A. Yes. Yes.

3 Q. Okay. Thank you.

4 And they bought Business One with the
15:51:30 5 understanding that it was customizable, correct?

6 A. Correct.

7 MR. MILLER: He's testifying as to --

8 THE COURT: Objection sustained.

9 MR. MILLER: Thank you.

15:51:45 10 BY MR. LAMBERT:

11 Q. Can you turn to Page 34.3 of that document, sir?

12 A. Okay.

13 Q. Are you there?

14 A. I -- I am.

15:52:00 15 Q. There's a section titled "Business Benefits of SAP
16 Business One," correct?

17 A. Correct.

18 Q. Are these selling points that SAP made you aware of
19 as part of -- as a channel partner of LSi -- or as a
15:52:15 20 channel partner of SAP?

21 A. These, these were good selling points. You're
22 right.

23 Q. And did you use these selling points when you were
24 marketing and selling Business One to Hodell?

15:52:23 25 A. Yeah. You want me to go through every one?

1 Q. I'm going to ask you about them specifically?

2 A. The drag and relate was a big deal. Easy
3 implementation, everybody wants that.

4 Q. I want to ask you to read enhanced productivity and
15:52:40 5 control.

6 Can you read that first sentence for the
7 jury?

8 A. Right. "Enhanced productivity and control.
9 Increased employee productivity, enhanced communication
15:52:49 10 with suppliers, and improved efficiency of all operations
11 add up to unsurpassed cost control."

12 Q. And that was the selling -- one of the selling
13 points of Business One?

14 A. Sure.

15:53:00 15 Q. And that was communicated to Hodell?

16 A. Sure. Yes.

17 Q. By you?

18 A. By my team, yes.

19 Q. And can you turn to -- actually on the same page,
15:53:14 20 new opportunities for success.

21 A. Yes. Read it?

22 Q. Can you read that section?

23 A. "The collaborative workgroup solution provides fast
24 and easy access to real-time information and supports
15:53:28 25 multiple, simultaneous transactions -- enabling companies

1 to identify and manage new sales opportunities and
2 quickly bring new products to market."

3 Q. Multiple simultaneous transactions, correct?

4 A. Correct.

15:53:42 5 Q. And that was one of the selling points you used in
6 selling Business One to Hodell?

7 A. I --

8 MR. MILLER: Objection.

9 A. I don't know but --

15:53:52 10 MR. MILLER: He hasn't testified as
11 to -- he hasn't been asked what he said to Hodell. He's
12 just asked a series of leading questions.

13 THE COURT: Yeah, really. How about
14 letting him testify?

15:54:02 15 MR. LAMBERT: Okay.

16 THE WITNESS: Am I to answer something?

17 MR. LAMBERT: No, I'm thinking too slowly.
18 I'll think faster.

19 THE WITNESS: Okay.

15:54:16 20 BY MR. LAMBERT:

21 Q. Can you turn down to -- actually look down at the
22 bottom of the page, there's a section "Unmatched
23 expertise."

24 A. Okay.

15:54:25 25 Q. Can you read that for the jury?

1 A. "Unmatched expertise. Because SAP Business One is
2 delivered through a network of highly qualified channel
3 partners who understand the specific challenges facing
4 small and midsize businesses, customers receive
15:54:40 5 world-class service and support."

6 Q. And to your knowledge, did SAP consider LSi to be
7 one of those highly qualified channel partners?

8 A. Well, my mother said never brag on yourself, but we
9 were a customer -- we were a company at that point, we
15:55:00 10 had approximately 80 installed FACTS accounts, so that
11 was a -- that's a sizable footprint of customers.

12 And I think when we left the SAP program,
13 we had 14 that we sold in those couple, three years,
14 however long we were a partner.

15:55:17 15 I mean, we could sell and install. And our
16 customer set was pretty good, so I would say we were a
17 high quality partner for them.

18 Q. Do you recall what you had told Hodell about LSi's
19 relationship with SAP?

15:55:36 20 A. In regards to?

21 Q. In regards to the sale channel for SAP Business
22 One.

23 A. You mean that we were the agent to sell that? I'm
24 not sure I --

15:55:53 25 Q. Well, did you say that?

1 MR. MILLER: Objection, Your Honor.

2 THE COURT: Overruled.

3 A. I'm not sure how to answer that.

4 THE COURT: Overruled.

15:55:59 5 A. I'm not sure how I address --

6 Q. Did you say something similar to that effect to
7 Hodell?

8 THE COURT: No, ask him what did
9 you -- please. What did you say? What was your
15:56:09 10 relationship to SAP?

11 A. SAP. Well, we represented ourselves as the
12 developer of the third-party add-on and an authorized
13 reseller of SAP to Hodell.

14 THE COURT: Thank you.

15:56:24 15 Q. Can you read the very last bullet point at the
16 bottom of 34.3 for the jury?

17 A. Okay. "Sales and support by channel partners. SAP
18 Business One is sold exclusively through qualified SAP
19 channel partners, who are selected and based on their
15:56:40 20 expertise in managing mission-critical business processes
21 and ability to help customers develop successful,
22 long-term IT strategies."

23 Q. Was LSi selected by SAP?

24 A. Yes.

15:56:57 25 Q. Was LSi selected by SAP based on their expertise,

1 on its expertise?

2 A. I would say yes.

3 Q. Directing your attention back up to the enhanced
4 productivity and control section, do you see that?

15:57:21 5 A. I do.

6 Q. SAP Business One was -- was SAP Business One
7 eventually installed at Hodell?

8 A. Yes.

9 Q. And Hodell went live on Business One?

15:57:33 10 A. Yes.

11 Q. Did Hodell, when it was using Business One,
12 experience enhanced productivity and control over its
13 business?

14 MR. MILLER: Objection, Your Honor.

15:57:44 15 THE COURT: Objection sustained.

16 MR. MILLER: Lack of foundation.

17 Thank you.

18 BY MR. LAMBERT:

19 Q. Are you aware of how SAP Business One functioned at
15:57:52 20 Hodell when it was running?

21 A. It functioned, the functions were great. It was
22 slow.

23 Q. In other words, what do you mean by slow?

24 A. The response time to the end users.

15:58:11 25 Q. Okay. So do you know whether that slowness

1 inhibited the enhanced productivity and control of
2 Hodell's business?

3 A. Well, I don't see how it could not have.

4 Q. And why is that?

15:58:28 5 A. Well, we spent, from the time they went go-live
6 which was, again, what, March, '07 through some time in
7 '08, I mean, we were just nonstop trying to fix problems,
8 problems, problems, problems.

9 So I mean, it had to affect their
15:58:54 10 productivity. They had to duplicate employees in some
11 instances and allow us to get in there and do the -- you
12 know, as this was going on, we were -- we had -- right
13 after go-live, we pretty much devoted most of the
14 resources of the company, at that time it was 40 people,
15:59:16 15 now we're eight people, to fix Hodell.

16 So we were involved in data collection and
17 I think I remember one of the questions earlier, did you
18 measure the response times or something, all that had to
19 have been done and documented and sent to SAP Germany.
15:59:35 20 It was huge.

21 MR. MILLER: Objection, Your Honor.

22 THE COURT: Objection sustained.

23 MR. MILLER: Thank you. And move to
24 strike.

15:59:39 25 THE COURT: All right. We don't need any

1 speeches.

2 Ask a question, please.

3 MR. LAMBERT: I will.

4 BY MR. LAMBERT:

15:59:44 5 Q. Can you turn to the next page of that document,
6 34.4?

7 A. Okay.

8 Q. I'd like to ask you a question about the very first
9 sentence on that page, starts with "SAP channel partners
15:59:56 10 provide."

11 Can you read that first for the jury?

12 A. "SAP channel partners provide customers with
13 committed support and expertise, fully backed by the
14 resources of SAP."

16:00:06 15 Q. In your mind, was that a selling point for Business
16 One?

17 A. Sure.

18 Q. Was that important -- to your knowledge was that
19 important to Hodell?

16:00:15 20 A. Sure.

21 Q. Can you turn to the next exhibit in that binder,
22 Mr. Lowery? It's Exhibit 35.

23 A. Okay.

24 Q. Can you identify this document for the jury?

16:00:32 25 A. You mean Plaintiff X-35?

1 Q. Yes, sir. X is short for exhibit.

2 A. I'm sorry?

3 Q. X is short for exhibit, so that's Exhibit 35.

4 A. Okay.

16:00:47 5 Q. Can you identify that exhibit for the jury?

6 A. Introducing SAP Business One 2004.

7 Q. Can you tell the jury what this document is?

8 A. It's a marketing document.

9 Q. Is it a marketing --

16:01:05 10 A. Sales document.

11 Q. What product is it discussing?

12 A. SAP Business One.

13 Q. Does it indicate who the publisher of that document
14 is?

16:01:13 15 A. Who the publisher is?

16 Q. Yeah, who -- yeah.

17 A. Where would I find that? Oh, SAP AG.

18 Q. Did you utilize any of the information in Exhibit
19 35 in selling Business One to Hodell.

16:01:36 20 A. I'm sure we passed these out.

21 Wait a minute, this is a partner brief,
22 2004, June, a partner brief. So this is a marketing
23 document to us, to try to give us to get on board with
24 them.

16:01:52 25 Q. Was this a marketing document that was provided to

1 LSi by SAP?

2 A. Yes. So this would be distributed from SAP to the
3 partners, or potential partners.

4 Q. And again, what's the date of the document?

16:02:03 5 A. June, 2004.

6 Q. And turn to 35.4 of Exhibit 35, Mr. Lowery.

7 A. Okay. I'm there.

8 Q. Is there anything on this page that you utilized in
9 marketing Business One to Hodell?

16:02:29 10 A. I have to read it. The bullet points are enhanced
11 productivity, management insight, broad functionality,
12 SAP commitment.

13 I don't know how to answer that.

14 Q. Well, you testified that this was literature given
16:02:49 15 to LSi by SAP, correct?

16 A. Right.

17 Q. For use in marketing Business One to end users like
18 Hodell?

19 A. Right. I mean, the drag and relate features, we
16:03:00 20 use that all the time.

21 Single, integrated, high performance
22 solution, SAP all over it, big deal. So in one form or
23 another, yes, these were selling points.

24 I'm sure we used them at Hodell.

16:03:18 25 Q. Do you recall any of those selling points being

1 important to Hodell in deciding whether to purchase
2 Business One?

3 MR. MILLER: Objection, Your Honor.

4 THE COURT: Sustained.

16:03:26 5 MR. MILLER: Thank you.

6 A. Hodell would answer that.

7 Q. Okay. Could you turn to the next exhibit,
8 Mr. Lowery, 36?

9 A. Okay.

16:03:40 10 Q. Can you identify Plaintiff's Exhibit 36 for the
11 jury?

12 A. It's an SAP solution brief.

13 Q. Do you see -- have you seen Exhibit 36 before?

14 A. Yes.

16:03:56 15 Q. Can you explain what it is to the jury?

16 A. It's a sales document, it appears. Yeah. It's
17 going to many of these companies --

18 Q. If it's hard for you to read --

19 A. Yes.

16:04:16 20 Q. -- I can have Kim blow it up on your screen for
21 you.

22 A. No, I can read it. Just give me a second.

23 Q. Okay.

24 A. Well, I mean, it's a marketing or sales document
16:04:36 25 for Business One. I can't determine if it's to partners

1 or customers. It can go to either, it appears.

2 Whether you have five employees or 500, so
3 it must be to customers.

16:04:49

4 Q. Do -- can I direct your attention down to the
5 bottom right-hand corner where it says "LSi"?

6 A. Yes.

7 Q. To your knowledge, does that indicate it was
8 produced by LSi in this litigation?

9 A. Okay.

16:04:57

10 Q. Is that correct?

11 A. That's correct.

12 Q. Okay. Do you see some handwriting on that
13 document?

16:05:11

14 A. 2004-5 on the top, and a star next to part of the
15 paragraph.

16 Q. Whose handwriting is that?

17 A. Mine.

18 Q. That's your handwriting?

19 A. Um-hmm.

16:05:17

20 Q. What's the significance of the handwriting?

21 A. What's the significance of it?

22 Q. Yeah, why did you write that on there?

23 A. Let's see here. Well, I put a star next to things
24 that I think are important. You want me to read what I
16:05:31 25 thought was important?

1 Q. Well, first of all, why did you think it was
2 important?

3 A. Well, it mentions five employees to 500 employees.

4 Q. Why do you think that was important?

16:05:46 5 MR. MILLER: Your Honor, could we have it
6 somewhat established when this was, whether it was in
7 2003 or '04 or whether it was part of this litigation
8 when he produced this document?

9 THE COURT: Good point. He said it was
16:05:58 10 produced in litigation.

11 MR. MILLER: The document was produced in
12 the litigation, and he's asking questions about this star
13 that's supposedly --

14 THE COURT: When did you write on the
16:06:05 15 document? That's a pretty simple way to do it.

16 THE WITNESS: I don't know.

17 THE COURT: There you go.

18 MR. MILLER: Thank you.

19 THE COURT: Thank you.

16:06:15 20 MR. MILLER: I'd object to this line of
21 questioning.

22 THE COURT: Yeah, move on to something
23 else.

24 BY MR. LAMBERT:

16:06:20 25 Q. Well, can you read --

1 THE COURT: He doesn't have to read. You
2 can argue it later.

3 MR. LAMBERT: Okay.

4 THE COURT: You can read it if you want.

16:06:28 5 BY MR. LAMBERT:

6 Q. Did you rely upon any of this in marketing Business
7 One to Hodell?

8 A. Sure, the five to 500 employees, it's always there.

9 Q. And you understood that to mean five to 500 users,
16:06:39 10 is that correct?

11 A. Yes. At that time, sure.

12 Q. And you told Hodell, based upon that, that Business
13 One would be appropriate for five to 500 users, correct?

14 MR. MILLER: Objection, Your Honor.

16:06:52 15 THE COURT: Objection sustained.

16 MR. MILLER: Thank you.

17 THE COURT: How about a little direct?
18 You're doing all the testifying here.

19 BY MR. LAMBERT:

16:06:59 20 Q. Mr. Lowery, what did you tell --

21 THE COURT: You can ask him did you talk to
22 somebody at the Plaintiff's, who did you talk to, what
23 did you tell them.

24 MR. LAMBERT: Sure.

16:07:11 25 THE COURT: That's the easy way to do this.

1 MR. LAMBERT: Sure.

2 BY MR. LAMBERT:

3 Q. Mr. Lowery, did you talk to anybody at Hodell about
4 Business One?

16:07:18 5 A. Dale did most of the selling and talking on this.

6 Q. But did you have any conversations with Hodell as
7 well?

8 A. Yes. After -- I don't know what specifically time
9 frame. I don't know.

16:07:36 10 Q. But before the development agreement was signed,
11 did you meet with Hodell?

12 A. Oh, yeah. Yes.

13 Q. Did you talk -- who did you talk with at Hodell?

14 A. Otto, Kevin, I'm sure. I can't be for sure.

16:07:50 15 Q. And what did you talk about?

16 A. You know, the development, the potential of doing
17 business, going through their operation. Reviewing what
18 Dale and Otto and Kevin, I'm sure, talked about and this
19 and that.

16:08:12 20 And I'm sure the topic of will this grow
21 with us came up, and that's why they're going with SAP,
22 if that's what you're asking.

23 Q. Did the number of users that the software could
24 support ever come up in your conversations with Hodell?

16:08:26 25 A. I can't remember, to be honest with you.

1 It was just a fact at that point.

2 Q. What was a fact?

3 A. That they support up to 500 was the number that was
4 being published by SAP.

16:08:38 5 Q. Do you remember the number of users the software
6 could support being important to Hodell?

7 A. Sure.

8 Q. And why was that?

9 A. When was that?

16:08:50 10 MR. MILLER: Objection.

11 THE COURT: Objection sustained.

12 A. Well --

13 Q. How do you -- do you remember the number of users
14 that Business One could support being important to
16:08:59 15 Hodell?

16 A. The first time I heard that was important is when
17 Dale came back from visiting with SAP, becoming a
18 partner, and he said he asked how many users it would
19 support because that was --

16:09:11 20 MR. MILLER: Objection, Your Honor.

21 THE COURT: Objection sustained.

22 MR. MILLER: They --

23 Q. I'm not asking what Dale said. I'm asking about
24 the importance to Hodell.

16:09:20 25 Do you recall the number of users that

1 Business One could support being important to Hodell?

2 MR. MILLER: Your Honor, that's the
3 problem, he's trying to get the witness to testify as to
4 what was important to Hodell.

16:09:30 5 THE COURT: Yes, right. You can have them
6 testify about it.

7 He just said before he doesn't remember who
8 he talked to or what exactly they said, but they
9 discussed a lot of things. If you can get more direct
16:09:44 10 than that, then go ahead.

11 BY MR. LAMBERT:

12 Q. Sir, I just want to back up.

13 Do you remember when -- who you talked to
14 at Hodell during the sales process?

16:09:57 15 A. During the sales process?

16 Q. Yes.

17 MR. MILLER: Objection. Your Honor --

18 THE COURT: Overruled.

19 THE WITNESS: I didn't understand.

16:10:10 20 THE COURT: I know. When you tried to make
21 the sales pitch to Hodell, who did you talk to?

22 THE WITNESS: The sales pitch was made by
23 Dale.

24 THE COURT: All right. So it wasn't made
16:10:21 25 by you, right?

1 THE WITNESS: The what, sir?

2 THE COURT: It was not made by you, the
3 sales pitch?

4 THE WITNESS: No.

16:10:26 5 THE COURT: Thank you.

6 BY MR. LAMBERT:

7 Q. Sir, is it your testimony here today that you
8 didn't make any representations to Hodell about the
9 capability of the Business One software?

16:11:02 10 A. Did -- I didn't understand that.

11 Q. Is it your testimony that you did not have any
12 conversations with Hodell about the number of users that
13 the Business One software could support?

14 A. I don't -- here's how I'll answer that.

16:11:23 15 I mean, I don't remember specifically
16 telling Otto or Kevin it will support 500.

17 I do remember that it was just a fact at
18 that point that the product -- it had already been
19 discussed that that was the upper limit that this product
16:11:38 20 would handle.

21 Now, could I have said that in addition to
22 Dale? Yes, but I don't specifically remember it.

23 Q. So you're not denying that you might have said that
24 to Hodell?

16:11:51 25 A. No, I'm not denying that at all.

1 MR. MILLER: Objection.

2 THE COURT: Objection sustained.

3 MR. MILLER: Thank you.

4 BY MR. LAMBERT:

16:11:58 5 Q. Did you have any knowledge about what was important
6 to Hodell in selecting an ERP system?

7 A. Yes.

8 Q. What was the basis for that knowledge?

9 A. My people reporting to me, telling me; Dale
16:12:10 10 specifically.

11 Q. What was your understanding of what was important
12 to Hodell?

13 A. Scaleability.

14 Q. What do you mean by that?

16:12:17 15 A. Number of users.

16 MR. MILLER: Objection, Your Honor.

17 Mr. --

18 THE COURT: Objection sustained. We went
19 over this several times.

16:12:24 20 MR. MILLER: Thank you.

21 BY MR. LAMBERT:

22 Q. Did you have any communications with anyone at SAP
23 during the sales cycle of Business One to Hodell?

24 A. I'm sure, yes.

16:12:39 25 Q. Do you recall who you spoke with?

1 A. Well, again, my primary contact was --

2 MR. MILLER: Your Honor, forgive me, but
3 this has been gone over. He already testified --

4 THE COURT: He has. Let's see if he says
16:12:53 5 something different.

6 A. Dan Kraus, Geoff Ashley, primarily.

7 Q. Do you recall when you would have first -- did you
8 ever mention Hodell by name to any SAP employee?

9 A. Yes.

16:13:03 10 Q. Do you recall when you first would have done that?

11 A. To Dan Kraus it was at dinner in St. Louis at a
12 restaurant called the Crossing when I told him that we
13 were about to sell it.

14 Q. So Business One had not been sold to Hodell at that
16:13:25 15 point?

16 A. We did not have a contract, no.

17 Q. Do you recall what year that was?

18 A. '04, probably November, '04, December, '04.

19 Q. Could you turn to Exhibit 71 in your binder,
16:13:47 20 Mr. Lowery?

21 A. Okay.

22 Q. Can you identify Exhibit 71 for the jury?

23 A. It's a letter, it's -- what is this?

24 It's an e-mail from Dale Van Leeuwen to me,
16:14:14 25 copied Jon Woodrum who was my vice president.

1 Q. Can you scroll through the whole thing or flip
2 through the whole thing and just --

3 A. It's titled funding for the development, and I
4 presume it's Hodell's development.

16:14:27 5 Q. Could you turn to the last page of it?

6 MR. MILLER: Objection.

7 THE COURT: Overruled.

8 MR. MILLER: It's something not based on
9 any evidence.

16:14:33 10 THE COURT: Is that what it is or --

11 MR. MILLER: No, it's not. The word
12 "Hodell" is not in the document.

13 THE COURT: Well, what is it?

14 MR. LAMBERT: I'm asking him to identify
16:14:41 15 it.

16 BY MR. LAMBERT:

17 Q. Can you identify this document for the jury? How
18 about rather than the whole document, we can just go to
19 specific parts of it, would that be better?

16:15:30 20 A. Yeah.

21 Q. Turn to Page 71.3.

22 A. Okay.

23 Q. There's an e-mail down at the bottom of that, that
24 page?

16:15:41 25 A. Okay.

1 Q. At the bottom of 71.3?

2 A. Okay.

3 Q. It says from D. Lowery at LSiSTL.com?

4 A. Okay.

16:16:00 5 Q. Was that -- was that your e-mail address?

6 A. Yes.

7 Q. And do you recall sending that e-mail?

8 A. Is this the one July 21st?

9 Q. That's the one I'm discussing, yes.

16:16:11 10 A. To Dan Kraus? Well, let me just read it here. I

11 mean do you want me to read it or just --

12 Q. I want you to --

13 A. Did I send it? Yes.

14 Q. That's an e-mail you sent?

16:16:37 15 A. Yes.

16 Q. And who is it to?

17 A. To Dan Kraus.

18 Q. And Dan Kraus is with SAP?

19 A. Dan Kraus is with SAP.

16:16:47 20 Q. What's the date of the document, sir?

21 A. July 21st, 2004.

22 Q. The date of the e-mail is July 21st, 2004, correct?

23 A. Correct.

24 Q. Is this prior to Hodell executing any agreements

16:17:07 25 with LSi?

1 A. Yeah, that was December, correct, 2004? I'm
2 asking. I mean, can somebody help me? I'm --

3 Q. If you want, you can turn to Exhibit 291 in your
4 binder if that will help you out. A lot of this happened
16:17:34 5 a long time ago.

6 A. It would -- it's -- I'm sorry, did we already look
7 at 291?

8 Q. Yes. 291, sir.

9 A. 291. Okay. This is dated November 30th, 2004.

16:17:52 10 Q. What is Exhibit 291?

11 A. Actually it was signed on 12/24/04 so.

12 Q. What was?

13 A. The development agreement.

14 Q. Okay. So going back to Exhibit 71, does that
16:18:06 15 refresh your recollection as to whether Hodell had signed
16 anything prior to you sending this e-mail?

17 A. Right, they had not signed anything prior to that
18 e-mail.

19 Q. What's being discussed in Exhibit 71?

16:18:22 20 A. What does that e-mail say?

21 Q. Yeah, what's being discussed, what are you telling
22 Dan Kraus in Exhibit 71?

23 A. "Dan, hope all is going well," do you mind if I
24 read it, jury?

16:18:36 25 THE COURT: Go ahead.

1 A. "I was happy to see that we have our first SAP
2 Business One sale, Kato," K-A-T-O, "in Virginia, and then
3 hopefully DRI in Kansas City," which we got that as well,
4 "Will happen next week. Our pipeline continues building
16:18:54 5 which we will forward to Ken Lorenzo, Ken L., early next
6 week." There's another guy we talked to often.

7 "Dale Van Leeuwen has back surgery
8 scheduled tomorrow and will be recuperating for three
9 weeks. We plan to have him working, however, from his
16:19:10 10 bed. Right, Dale?" So he must have been copied on
11 this.

12 "He has a stack of things that can be done
13 from home. Dale and I have been talking about two large,
14 close prospects who want us to write our equipment rental
16:19:28 15 and fastener functionality to SAP. One is currently
16 installed on FACTS, and the other is waiting for us to
17 propose the cost and timeline for our equipment rental on
18 SAP Business One. They are both 150-user deals which
19 would give us two verticals for the SAP Business One
16:19:46 20 product. Personally, I feel verticals are the quickest
21 route to continuing SBO sales.

22 "Ken Lorenzo mentioned the possibility of
23 SAP helping on the funding of this development if we
24 delivered a business plan that built a solid case. I
16:20:02 25 believe we are in that position to do so. Can you help

1 us understand what SAP is looking for from us, and to
2 what extent they might help? Let me know when a good
3 time to call and discuss might be."

16:20:23 4 Q. Thank you. That e-mail mentioned 150-user deals,
5 do you remember reading that part?

6 A. Yes.

7 Q. Was one of those Hodell?

8 A. Yes.

9 Q. Had you had any discussions with Dan Kraus about
16:20:32 10 Hodell by the time you sent this e-mail?

11 A. Well, we don't tell him the name on the e-mail. I
12 mean, did I talk to him before I sent that e-mail about
13 Hodell? I'm confused.

14 Q. Yes, that was my question.

16:20:45 15 A. Not specifically about Hodell, other than
16 generically right there.

17 Q. Okay. Did Dan Kraus reply to you?

18 A. Well, we never got any money, so I guess he
19 replied.

16:21:04 20 Q. Is there an e-mail in that chain on Exhibit 71
21 where Dan Kraus replies to you?

22 A. Well, hang on. I mean, let me crawl up here.

23 Okay. Dan Kraus to me. "Please see note
24 from Ralf below. I think we can help you land your
16:21:18 25 current prospects with the promise of a larger SAP

1 relationship for the product, and we can make some
2 commitments on helping you market the solution once it is
3 done (or close) but we have not been doing direct
4 development funding."

16:21:36 5 Q. And what's the solution, to your knowledge, that's
6 being referenced in this e-mail?

7 A. In-Flight Enterprise.

8 Q. That would be integrated into Business One?

9 A. Yes.

16:22:03 10 Q. Can you turn to Exhibit 40 in your binder?

11 A. Okay.

12 Q. Can you identify Exhibit 40 for the jury?

13 A. E-mail from me to Dan Kraus, carbon copy Dale, Jon
14 Woodrum, and this is dated November, '04.

16:22:26 15 Q. That's an e-mail you sent to Dan Kraus November of
16 '04?

17 A. Right. Okay. So this may be the first time he
18 heard the words "Hodell."

19 "LSi/IBIS has an opportunity with Hodell,
16:22:40 20 an existing IBIS fastener customer using FACTS. The
21 owner has given verbal agreement to pre-paying a portion
22 of their SAP licenses, as a way for LSi/IBIS to fund the
23 programming development to convert our fastener specialty
24 to SAP Business One."

16:22:58 25 Do you want me --

1 Q. What's the fastener specialty you were mentioning
2 in this e-mail?

3 A. In-Flight Enterprise is what it eventually was
4 named, the one Hodell ran.

16:23:10 5 Q. There's a statement, "He's willing to do this for
6 four reasons," do you see that?

7 A. Yes.

8 Q. Can you read those for the jury?

9 A. "He is willing to do this for four reasons,"
16:23:20 10 talking about Otto.

11 "He has tremendous confidence and respect
12 for Dale Van Leeuwen and IBIS fastener software. He is
13 on a growth path, mostly through acquisitions, that his
14 existing software architecture struggles with. SAP
16:23:36 15 Business One affords him flexibility and growth paths.
16 LSi/IBIS can integrate Radio Beacon successfully into his
17 operation and SAP Business One. He has seen and feel the
18 functionality of SBO, SAP Business One, is what he
19 needs" -- oh, "he has seen it and feels the functionality
16:23:59 20 of SAP Business One is what he needs from a software
21 package."

22 Q. And who is the "He" you're referring to there?

23 A. Otto, Otto Reidl.

24 Q. Do you see the next part of that e-mail, you list
16:24:18 25 benefits, do you see that?

1 A. Benefits.

2 Q. What's that? Can you read that for the jury?

3 A. "Benefits to SAP Business One," so this would be
4 benefits to SAP.

16:24:29 5 "If we develop our vertical for Hodell, a
6 full function fastener company, we would now have a
7 vertical solution for the complete industry to use, could
8 use.

9 "The market potential is large. It
16:24:42 10 appears there could be an immediate pool of prospects of
11 500 companies.

12 "Hodell is very visible in the industry.

13 "Hodell is growing and could double in
14 users within one year or sooner."

16:24:54 15 Q. Can you turn to the next page of that document?

16 A. Okay.

17 Q. What's that page?

18 A. An Excel spreadsheet. Let's see, LSi-Lowery
19 Systems, dated November, 2004.

16:25:16 20 Q. Was that an attachment to your e-mail?

21 A. I don't know. Let's see. I don't know. How would
22 I know that? Oh, there's an attachment, proposal XLS,
23 okay.

24 Yes.

16:25:28 25 Q. What's the name of that attachment?

1 A. Hodell-Natco proposal.

2 Q. Thank you.

3 A. And do you want --

4 Q. Does it reference the number of SAP licenses?

16:25:45 5 A. Eighty licenses, total revenue, LSi cost.

6 Q. And if Hodell doubled in users, how many would that
7 bring them up to?

8 A. 160.

9 Q. Was there any concern expressed to you about
16:26:01 10 selling eighty users, potentially selling 80 users to
11 Hodell?

12 A. Were we concerned about selling 80 users?

13 Q. No. Was there any concern expressed by SAP to you
14 about selling 80 users to Hodell?

16:26:15 15 A. Oh, no. No.

16 Q. Was there any concern expressed to you by SAP about
17 selling a customer that might grow to 160 users?

18 A. No. As a matter of fact, I mean, at go-live, there
19 was 120 planned, and then double that in a year, so we
16:26:33 20 were looking at 240 was the number that we were always
21 using.

22 THE COURT: Is this a good time to stop
23 you?

24 MR. LAMBERT: Good as any.

16:26:45 25 THE COURT: Okay. All right, folks. I

1 told you 4:30. We're right on the dot.

2 Keep in mind the admonition. You've heard
3 some evidence. You certainly haven't heard it all and
4 you don't know the law that applies in the case.

16:26:58 5 Continue, keep an open mind, don't form or express any
6 opinion about any aspect of the case. Have a good night.

7 See you same time, 8:15, where,
8 Mr. Panigutti?

9 A JUROR: L-1.

16:27:15 10 THE COURT: All right.

11 THE CLERK: All rise.

12 (Jury out).

13 (Proceedings adjourned at 4:27 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter
Certified Realtime Reporter

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